



**Department of
Transportation**

I-81 VIADUCT PROJECT – PHASE 1, CONTRACT 1

DESIGN-BUILD PROJECT

PIN 3501.90, Contract D900054

Request for Proposals

Addendum #7

September 9, 2022

Modification to the Request for Proposals
I-81 VIADUCT PROJECT – PHASE 1, CONTRACT 1
Design-Build Project
PIN 3501.90, Contract D900054

Note to Proposers

Differences between the deleted pages and the revised pages have been identified as follows:

- Brackets have been inserted on the left-hand margin of the pages to indicate where changes have been made to the documents; and
- Text additions have been shown in underlined red font and text deletions have been shown in crossed out red font.

General Instructions

Delete Page A-3 of the Instructions to Proposers, Appendix A, Project Information, and substitute the attached revised Page A-3.

Delete Form SP of the Instructions to Proposers, Appendix E, Forms, and substitute the attached revised Form SP.

Delete Pages 12 through 34 and 50 of the DB Contract Documents, Part 2, DB Section 100, and substitute the attached revised Pages 12 through 34i and 50.

Delete Page 179 of the DB Contract Documents, Part 3, Project Requirements, and substitute the attached revised Page 179.

Delete Page ii and SP-16 Draft Project Labor Agreement of the DB Contract Documents, Part 5, Special Provisions, and substitute the attached revised Page ii and SP-16 Project Labor Agreement. Please note, there are no tracked changes included on Page ii but the page is included due to updates to the Table of Contents.

Delete Page 7 of the DB Contract Documents, Part 6, RFP Plans – Directive Notes, and substitute the attached revised Page 7.

Delete Restoration Plans - Water Resource Mitigation Table of the DB Contract Documents, Part 7, Engineering Data (Part 2 of 2), and substitute the attached revised Restoration Plans - Water Resource Mitigation Table.

No other provision of the solicitation is otherwise changed or modified.

K) New Structure – I-81 NB over FEMA Floodway

Construct new superstructure and substructure to accommodate new mainline I-81 NB

- L) Installation of noise walls along BL81 (former I-81) between NYS Thruway (Thruway exit 36 or existing I-81 exit 25A) and I-81/I-481 interchange

A2.0 PROJECT GOALS

The Department's goals and objectives for the Project are to:

- 1) Ensure a long-service life for all Project elements to satisfy long term preservation goals.
- 2) Ensure the safety of the traveling public.
- 3) Maximize the impact of the public investment in the Project by:
 - a. Providing cost-effective solutions;
 - b. Sequencing construction to minimize effects on vehicular traffic operations;
 - c. Minimizing effects on residential neighborhoods and business communities;
 - d. Reducing future maintenance requirements; and
 - e. Minimizing impacts on the environment.
- 4) Deliver the Project safely, on schedule and within budget.
- 5) Ensure coordination with all utility owners, third parties, and Project stakeholders and any adjacent construction projects.
- 6) Provide improvements that enhance the livability and visual quality in and around the project area.
- 7) Provide improved operational efficiencies in and around the project area.
- 8) Ensure the project is compliant with the Department's environmental commitments.
- 9) Provide best value to the Department.

A3.0 PROJECT LABOR AGREEMENT

The Department has undertaken a due diligence study to determine whether there will be a public benefit to implementation of a Project Labor Agreement (PLA) for the Project and has concluded that a PLA is warranted. The agreement to be entered into between the Design-Builder and appropriate trade unions will be prepared and provided to the Proposers by Addendum. ~~Draft~~The Project Labor Agreement is included in Part 5 – Special Provisions, SP-16.

Any provision in the RFP inconsistent with the provisions of an approved PLA shall be superseded by the PLA to the greatest extent permitted by federal or state law.

A4.0 REFERENCE DOCUMENTS

FORM SP
SCHEDULE OF PRICES

Proposer: _____

Item #	Item Name	<u>Price</u> (1)
800.06000115	Design Build – Construction Work – Southbound I-81 (not including Bridge Work)	
800.06000215	Design Build – Construction Work – Northbound I-81 (not including Bridge Work)	
800.06000315	Design Build – Construction Work – I-81 NB Over I-90 NYS Thruway – Widening/Rehabilitation	
800.06000415	Design Build – Construction Work – BIN 1072781 – Widening/Rehabilitation & BIN 1072782 – Partial Replacement	
800.06000515	Design Build – Construction Work – BIN 1072791 & BIN 1072792 – Widening/Rehabilitation	
800.06000615	Design Build – Construction Work – <u>I-81 SB over I-481 NB</u> <u>BIN XXXXXXXX</u> - New Structure	
800.06000715	Design Build – Construction Work – <u>I81 SB and I81 NB over</u> <u>FEMA Floodway</u> <u>BIN XXXXXXXX & BIN XXXXXXXX</u> - New Structures	
800.06000815	Design Build – Construction Work – <u>I-81 SB over BL 81 NB</u> <u>BIN XXXXXXXX</u> - New Structure	
800.06000915	Design Build – Construction Work – BIN 1031720 - Replacement	
800.06001015	Design Build – Construction Work – Noise Barriers	
800.06001115	Design Build – Construction Work – BIN 1031701 – Partial Replacement	
800.06010115	Design Build – Construction Work – Steel Superstructure Repairs – Directive Repairs	
800.06020015	Design Build – Construction Work – Steel Superstructure Repairs – Unanticipated Repairs	\$1,000,000.00
800.06060115	Design Build – Construction Work – Concrete Substructure Repairs – Directive Repairs	
800.06070015	Design Build – Construction Work – Concrete Substructure Repairs – Unanticipated Repairs	\$1,000,000.00
800.04001115	Design Build – Extra Work	\$15,000,000.00

New York State Department of Transportation

	Subtotal A	
800.05000015	Design Build – Site Mobilization (Maximum 4% of Subtotal A)	
	Subtotal B (Sum of Subtotal A and Site Mobilization)	
800.14000115	Design Build – Local Hire Incentive	\$2,080,000.00
800.15000115	Design Build – Training Requirements	\$819,000.00
800.16000120	Steel/Iron Price Adjustment	\$2,000,000.00
800.01000015	Design Build – Design Services	
800.02000015	Design Build – Construction Inspection Services	
800.03000015	Design Build – Quality Control Services	
	TOTAL PROPOSAL PRICE	

Notes:

- 1.) Proposers shall complete Form SP using the excel spreadsheet located on the Department's Project web site.
- 2.) Subtotal B will be the value used to *calculate* the 30% Prime/DB self work requirement less any Self Performance Specialty Items included in Part 5 – Special Provisions.

Instructions:

- 1.) Enter Lump Sum Price for each Price Item in the white, non-shaded, cells.

**DB SECTION 103
CONTRACT AWARD AND EXECUTION**

DB 103-01 CONTRACT AWARD.

See ITP 6.0.

DB 103-02 EXECUTION OF CONTRACT.

See ITP 6.2.

DB 103-03 CONTRACT BONDS.

NYSDOT Standard Specification §103-03 shall apply.

DB 103-04 CANCELLING AWARD.

NYSDOT Standard Specification §103-04 shall apply.

DB 103-05 PARTNERING.

NYSDOT Standard Specification §103-05 shall apply.

DB 103-06 SAMPLE FORM OF CONTRACT AGREEMENT.

**STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
DESIGN BUILD
CONTRACT AGREEMENT**

Contract
County(ies):

THIS AGREEMENT, made by and between THE PEOPLE OF THE STATE OF NEW YORK,
hereinafter referred to as 'State', acting by and through the Department of Transportation,
pursuant to the Highway Law, and

☐ an individual / Sole Proprietor conducting business as:
☐ a Partnership, consisting of:
☐ a Corporation organized and existing under the laws of the State of:
☐ a Limited Liability Company (LLC), organized under the laws of the State of:
☐ a Joint Venture, consisting of:

the location of whose principal office is:
hereinafter called the "Design-Builder" or "Proposer" or "Contractor".

WITNESSETH: That the State and the Design-Builder, for the consideration hereinafter
named agree as follows:

ARTICLE 1. WORK TO BE DONE. The Design-Builder shall furnish all the materials, appliances,
tools and labor of every kind required, and construct and complete in the most substantial and
skillful manner, the design, construction, improvement or reconstruction of the project on or before
the completion date(s) described in Article 4, and in accordance with this Contract Agreement

and any Contract Documents specific to the following project:

[Contract Description]

F.A. Project Number:

in the County(ies) listed above which constitutes contract D900054

The Design-Builder further agrees that their Proposal, as defined by the Design Build (DB) Section 100 General Provisions, is not based upon the assumption that any specifications, traffic restrictions, scheduling or phasing/staging requirements will be waived; an extension of Contract Completion Date will be granted; a labor dispensation will be granted; substitution of non-approved products, alternatives or claimed functional equivalents for specified construction materials and methods will be allowed; or any Value Engineering Change Proposals will be approved.

As full compensation for the Work, the Department will pay the Design-Builder a lump sum of \$ _____, which shall equal the total lump sum proposal price for the Project, as agreed to by the Department, less the unused portion of the lump sum price for the Design-Build Extra Work and any deletion of Work. The Contract Amount may be subject to adjustment from time to time by Change Order(s).

In accordance with Section 41 of the New York State Finance Law, this Contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State beyond moneys available for the purpose thereof.

ARTICLE 2. COMPONENTS OF THE CONTRACT. This Contract shall incorporate and consist of: (a) this Agreement, which includes Appendix A *Standard Clauses for New York State Contracts*; (b) contract bonds, and (c) Contract Documents.

Contract Documents shall be deemed to include the following, specific to the above-referenced project: Appendix B Federal Requirements (including Attachment 1, FHWA Form 1273; Attachment 2, Federal Prevailing Wage Rate); Appendix C (including Attachment 1, State Prevailing Wage Rates; Attachment 2, Goals for Equal Employment Opportunity (EEO) Participation; Attachment 3, DBE/MBE/WBE/SDVOB Participation Goals (Request for Proposals Part 1); Design Build (DB) Section 100 General Provisions (also referred to as "DB §") and the referenced sections of the Standard Specifications of the New York State Department of Transportation (Request for Proposals Part 2); the Project Requirements (Request for Proposals Part 3); the Utility Requirements (Request for Proposals Part 4); the Special Provisions (Request for Proposals Part 5); the Directive Plans and Indicative Plans included in the RFP Plans (Request for Proposals Part 6); the Engineering Data (Request for Proposals Part 7); the Special Specifications (Request for Proposals Part 8); and the Design-Builder's Proposal, including all addenda or appendices thereto (Request for Proposals Part 9); RFP Addenda (Request for Proposals Part 10); the Standard Specifications of the New York State Department of Transportation, Sections 200 through 700, in effect as of the Proposal Due Date, as adopted by the Department); Request for Proposals Instructions to Proposers; any supplemental agreements, amendments, Change Orders, Contract modifications, including those made after execution of the Contract; and all provisions required by law to be inserted in the Contract, whether actually inserted or not. Whenever separate publications are referenced in the Contract Documents it shall mean those, as amended, which are current as of the Proposal Due Date. Those components referenced above, but not attached to this Agreement, shall be deemed incorporated by reference.

The components of the Contract Documents, as amended, are intended to be complementary

and to describe and provide for a complete Project. The following components of the Contract Documents, as amended, complement one another in the following declining order of precedence:

A) Appendix A, *Standard Clauses for New York State Contracts*;

B) Appendix B Federal Requirements, including Attachment 1, FHWA Form 1273; Attachment 2, Federal Prevailing Wage Rate;

C) Appendix C, including Attachment 1, State Prevailing Wage Rates; Attachment 2, Goals for Equal Employment Opportunity (EEO) Participation; Attachment 3, DBE/MBE/WBE/SDVOB Participation Goals;

D) Design Build Contract Agreement (other than Appendix A, B, and C);

E) Request for Proposals Addenda (Request for Proposals Part 10);

F) Request for Proposals Instructions to Proposers;

G) Request for Proposals Parts 3 through 8;

H) Design Build (DB) Section 100 General Provisions (Request for Proposals Part 2);

I) The Standard Specifications of the New York State Department of Transportation, effective on the Proposal Due Date, Sections 200 through 700;

J) Design-Builder's Proposal, including all addenda or appendices thereto (Request for Proposal Part 9) (except as provided below).

However, where the Design-Builder's Proposal presents Work or products of a higher quality than that shown elsewhere in the Contract Documents, and the Department has accepted the proposed change to the Work and products to that of a higher quality, the Design-Builder's Proposal will take precedence for that specific higher quality Work and products, as applicable. Additionally, subject to Part 2 of the RFP, DB Section 100 General Provisions, and DB §104-11 *Alternative Technical Concepts*, where the Design-Builder's Proposal includes an approved Alternative Technical Concept, the Design-Builder's Proposal (including the approved Alternative Technical Concept) will take precedence for that specific Work that is the subject of the approved Alternative Technical Concept.

ARTICLE 3. EXAMINATION OF DOCUMENTS AND SITE. The Design-Builder agrees that before submitting a proposal, the Design-Builder carefully examined the Contract Documents, together with the site of the proposed Work, as well as the surrounding territory of the site, and the Design-Builder is informed regarding all of the conditions affecting the Work to be done and labor and materials to be furnished for the completion of this contract, including the existence of poles, wires, pipes and other facilities and structures of municipal and other public service corporations on, over or under the site, except latent conditions that meet the requirements of DB §104-03 *Differing Site Conditions*, and that the Design-Builder's information was secured by personal and other investigation and research.

ARTICLE 4. DATE OF COMPLETION. The Design-Builder further agrees that it will begin the

Work herein embraced upon receipt of the Notice to Proceed (NTP), unless the consent of the State, in writing, is given to begin at a later date, and that it will prosecute the same so that the Interim Completion Milestone Date(s) shown in Article 4.1, if applicable, shall be achieved, and that the project shall be entirely completed and performed on or before the completion date shown in Article 4.2.

ARTICLE 4.1 Interim Completion Milestone Date(s). The Project's Interim Completion Milestone Date(s) shall be based on the Design-Builder's Proposal, more specifically the number of calendar days past the Notice to Proceed (NTP) date issued by the Department. The number of calendar days past the NTP is found on the Schedule of Contract Durations Form SCD as part of the Design-Builder's Proposal.

No extension beyond the Interim Completion Milestone Date(s) fixed by the terms of this Contract shall be effective unless in writing signed by the State in accordance with the terms of State Finance Law §112. Any extension shall be for such time and terms and conditions as shall be fixed by the State, which may include the assessment of Liquidated Damages and Engineering Charges associated with Quality Assurance of design and construction activities or other expenses.

Notice of application for such extension shall be filed with the Department's Project Manager at least 15 days prior to the Interim Completion Milestone Date(s) fixed by the terms of this Contract.

ARTICLE 4.2 Project Completion Date. The Project's Completion Date shall be based on the Design-Builder's proposal, more specifically the number of calendar days past the Notice to Proceed (NTP) date issued by the Department. The number of calendar days past the NTP is found on the Schedule of Contract Durations Form SCD as part of the Design-Builder's Proposal.

No extension beyond the Project Completion Date fixed by the terms of this Contract shall be effective unless in writing signed by the State. Any extension shall be for such time and terms and conditions as shall be fixed by the State, which may include the assessment of Liquidated Damages and a charge for engineering, inspection, or other expenses actually incurred.

Notice of application for such extension shall be filed with the Department's Project Manager at least 15 days prior to the Project Completion Date fixed by the terms of this Contract.

ARTICLE 5. ALTERATIONS AND OMISSIONS. The said Work shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the State other than the consideration named in this Agreement.

The State reserves the right, at any time during the progress of the Work, to alter the scope of the Work or omit any portion of the Work as it may deem reasonably necessary for the public interest, making allowances for additions and deductions with compensation made in accordance with the Contract, without constituting grounds for any claim by the Contractor for damages or for loss of profits, whether actual or anticipated.

ARTICLE 6. NO COLLUSION OR FRAUD. The Design-Builder hereby agrees that the only person or persons interested as Principal or Principals in the proposal submitted by the Design-Builder for this contract are named therein, and that no person other than those mentioned therein has any interest in the above mentioned proposal or in securing of the award, and that this contract has been secured without any connection with any person or persons other than those named, and that the proposal is in all respects fair and was prepared and the contract was secured without collusion or fraud and that neither any officer nor employee of the New York State

Department of Transportation has or shall have a financial interest in the performance of the contract or in the supplies, Work or business to which it relates, or in any portion of the profits thereof. Legal requirements to which the Contractor must adhere are set forth in State Finance Law §139-a and §139-b.

ARTICLE 7. CONTRACT PAYMENTS. As the Work progresses in accordance with the contract and in a manner that is satisfactory to the State, the State hereby agrees to make payments to the Design-Builder therefore, based upon the proposal attached hereto and made a part hereof, as follows: The State shall once in each month and on such days as it may fix, determine the quantity of Work completed and of material which has actually been put in place in accordance with the terms and conditions of the contract, during the preceding month, and compute the value thereof and pay to the Design-Builder the monies due as provided in §38(7) of the Highway Law. No monthly payment shall be rendered unless the value of the Work completed equals 5% of the contract amount or \$1,000, whichever is the lesser. Semi-monthly payments may be rendered provided (a) the value of the Work performed in two successive weeks is more than \$50,000 or (b) the Commissioner of Transportation deems it to be in the best interests of the State to do so. The Design-Builder shall not hold any retainage from any Subcontractor.

The Design-Builder agrees to the terms for Periodic Payments described in Part 2, DB §109-01 *Measuring Quantities* and DB §109-06 *Contract Payments*.

ARTICLE 8. NO PAYMENT DUE TO DESIGN-BUILDER'S NON-COMPLIANCE. It is further agreed that so long as any lawful or proper direction concerning the Work or material given by the Commissioner of Transportation, or his/her/their representative, shall remain uncomplied with, the Design-Builder shall not be entitled to have said contract payment processed, nor shall any contract payment(s) be processed for Work performed or material furnished until such lawful or proper direction aforesaid has been fully and satisfactorily complied with.

ARTICLE 9. FINAL ACCEPTANCE OF WORK. When in the opinion of the Regional Director a Design-Builder has fully performed the Work under the contract, the Regional Director shall recommend to the Commissioner of Transportation the acceptance of the Work so completed. If the Commissioner accepts the recommendation of the Regional Director, he/she/they shall thereupon by letter notify the Design-Builder, with copies to other interested parties, of such acceptance. Prior to the Final Acceptance of the Work by the Commissioner or his/her/their designee, the contract Work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the Work after Final Acceptance.

Final Acceptance shall be final and conclusive except for defects not readily ascertainable by the Department, actual or constructive, fraud, gross mistakes amounting to fraud or other errors which the Design-Builder knew or should have known about as well as the Department's rights under any warranty or guarantee. Final Acceptance may be revoked by the Department at any time prior to the Office of the State Comptroller's approval of the Final Agreement (CONR 46) in instances when the Department discovers such defects, mistakes, fraud, or errors in the Work.

ARTICLE 10. FINAL AGREEMENT. After the Final Acceptance of the Work, the Department's Project Manager shall prepare a Final Agreement of the Work performed and the materials placed and shall determine the value of such Work and materials under and according to the terms of the contract. This Final Agreement shall be certified, as to its correctness, by the Department's Project Manager. Upon approval of such Final Agreement by the Regional Director, it shall be submitted to the Commissioner for final approval. The right, however, is hereby reserved to the Commissioner to reject the whole or any portion of the Final Agreement, should the said certificate

of the Department's Project Manager be found or known to be inconsistent with the terms of the agreement or otherwise improperly given. All certificates upon which partial payments may have been made shall be subject to correction in the final certificate or Final Agreement.

ARTICLE 11. RIGHT TO SUSPEND WORK AND CANCEL CONTRACT. It is further mutually agreed that if at any time during the prosecution of the Work the Commissioner of Transportation shall determine that the Work upon the contract is not being performed according to the contract or for the best interest of the State, the execution of the Work by the Design-Builder may be temporarily suspended by the Commissioner of Transportation, who may then proceed with the Work under his/her/their own direction in such manner as will accord with the contract specifications and be for the best interests of the State; or he/she/they may terminate the Design-Builder's employment under the contract while it is in progress, and thereupon proceed with the Work, in affirmance of the contract, by contract negotiated or publicly let, by the use of his/her/their own forces, by calling upon the surety to complete the Work in accordance with the Contract Documents or by a combination of any such methods; or he/she/they may cancel the contract and either re-advertise as provided in Section 38 of the Highway Law, or complete the Work under its own direction in such a manner as will accord with the contract specifications and be for the interests of the State; Any excess in the cost of completing the contract beyond the price for which it was originally awarded shall be charged to and paid by the Design-Builder failing to perform the Work or its surety; all in pursuance of the provisions of Section 40 of the Highway Law.

Whenever the State determines to suspend or stop Work under the contract, a written notice sent by mail to the Design-Builder at its address and to the sureties at their respective addresses, shall be sufficient notice of its action in the premises.

ARTICLE 12. DETERMINATION AS TO VARIANCES. In any case of any ambiguity in the Contract Documents or between any parts of the Contract Documents, the matter must be immediately submitted to the Commissioner, who shall adjust the same, and his/her/their decision in relation thereto shall be final and conclusive upon the parties.

ARTICLE 13. SUCCESSORS AND ASSIGNS. This Agreement shall bind the successors, assigns and representatives of the parties hereto.

ARTICLE 14. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with §139-h of State Finance Law, the Design-Builder hereby promises, asserts and represents that neither the Design-Builder nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, or the effective Regulations of the United States Department of Commerce promulgated under either act.

It is understood further that the State in awarding a contract does so in material reliance upon the promise and representation made by the Design-Builder in the forgoing paragraph and that such contract shall be rendered forfeit and void by the State Comptroller if subsequent to the bid execution date, the Design-Builder or such owned or affiliated person, firm, partnership or corporation has been convicted of a violation of the aforesaid Acts or Regulations or has been found upon final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated such Acts or Regulations.

The Design-Builder agrees to and shall notify the Commissioner of Transportation, the Director of the Contract Management Bureau and State Expenditures in the Office of the State Comptroller of any such conviction or final determination of violation within five (5) days thereof.

ARTICLE 15. WRITTEN NOTICES.

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - a. via certified or registered United States mail, return receipt requested;
 - b. by facsimile transmission;
 - c. by personal delivery;
 - d. by expedited delivery service; or
 - e. by e-mail.

Such notices shall be addressed to the individuals or titles named in the Contract Documents, or which are designated by the Design-Builder or the State at the pre-construction meeting, or which are designated by the State or the Design-Builder from time to time during the course of the Contract pursuant to Paragraph 3 herein.

2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

4. The following information is the contact information for the Department's Project Manager. The Department's Project Manager will serve as the main point of contact for the Design-Builder. All notices should be sent to the Department's Project Manager at the following address:

Name: _____

Address: _____

Telephone number: _____

Email: _____

5. The following information is the contact information for the Design-Builder's Project Manager. The Design-Builder's Project Manager will serve as the main point of contact for the State. All notices should be sent to the Design-Builder's Project Manager at the following address:

Name: _____

Address: _____

Telephone number: _____

Email: _____

ARTICLE 16. DESIGN-BUILDER RECEIPT OF PAYMENT. The Design-Builder shall provide complete and accurate information and supporting documentation required by the Contract, the Agency and the Office of the State Comptroller (OSC). Payment will only be rendered electronically, unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment will be made in accordance with ordinary State procedures and practices from the Statewide Financial System (SFS). The Design-Builder shall comply with OSC procedures to authorize

electronic payments. A Design-Builder that has not previously performed Work for New York State shall complete a Substitute Form W9 for processing by the Department in order to obtain an SFS Vendor ID. After obtaining an SFS Vendor ID, the Design-Builder will receive an email from SFS with information which includes a link to the payment portal to track and manage payments. For questions regarding electronic payments, the Design-Builder should contact SFS at (518) 457-7717 or (855) 233-8363. The Design-Builder will not receive payment under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

ARTICLE 17. SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT). During the performance of this contract, the Design-Builder, for itself, its assignees, and successors in interest (herein after referred to as the "Design-Builder") agree as follows:

- (1) Compliance with Regulations. The Design-Builder shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation of the United States 49 Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination. The Design-Builder, with regard to the Work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, sexual orientation, gender identity, age, and disability/handicap, or income status in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The Design-Builder shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the contract covers a program set forth in 49 CFR 21, Appendix B.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Design-Builder for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Design-Builder of the Design-Builder's obligations under this contract and 49 CFR 21 relative to nondiscrimination on the grounds of race, color, or national origin, sex, sexual orientation, gender identity, age, and disability/handicap.
- (4) Information and Reports. The Design-Builder shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the Design-Builder shall so certify to NYSDOT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance. In the event of the Design-Builder's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: (a.) withholding of payments to the Design-Builder under the contract until the Design-Builder complies, and/or (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The Design-Builder shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The Design-Builder shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a Design-Builder becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Design-Builder may request NYSDOT to enter into such litigation to protect the interests of NYSDOT; and, in addition, the Design-Builder may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 18. CONFLICTS OF INTEREST. Included in paragraph 6 of the JURAT submitted with the Proposal, the Design-Builder has provided a *Bidder Assurance of No Conflict of Interest or Detrimental Effect*, signed by an authorized executive or legal representative attesting that the Design-Builder's performance of the services does not and will not create a conflict of interest with, nor position the Design-Builder to breach any other contract currently in force with the State of New York, that the Design-Builder will not act in any manner that is detrimental to any State project on which the Design-Builder is rendering services.

The Design-Builder hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Design-Builder's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. The Design-Builder shall have a duty to notify the Department immediately of any actual or potential conflicts of interest.

In conjunction with any subcontract under this Agreement, the Design-Builder shall obtain and deliver to the Department, prior to entering into a subcontract, a *Proposer Assurance of No Conflict of Interest or Detrimental Effect* form, signed by an authorized executive or legal representative of the subcontractor. The Design-Builder shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Department a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

The Department and the Design-Builder recognize that conflicts may occur in the future because the Design-Builder may have existing, or establish new, relationships. The Department will review the nature of any relationships and reserves the right to terminate this Agreement for any reason, or for cause, if, in the judgment of the Department, a real or potential conflict of interest cannot be cured.

As further specified in 23 CFR 1.33 and 23 CFR 636.116, the Design-Builder hereby agrees that this Contract has been secured without any apparent or real conflict of interest that would (1) compromise the integrity and fairness of the procurement process, or (2) create circumstances where the Design-Builder obtained or appeared to obtain an unfair competitive advantage, or (3) compromise the interests of the Department and the People of the State of New York.

The Design-Builder further agrees that the Contract was secured without collusion or fraud and that neither any officer nor employee of the Department of Transportation has or shall have a financial interest in the performance of the Contract or in the supplies, Work or business to which it relates, or in any portion of the profits thereof. Legal requirements to which the Contractor must adhere are set forth in State Finance Law §139-a and §139-b.

ARTICLE 19. ETHICS REQUIREMENTS. The Design-Builder and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its

predecessors (collectively, the “Ethics Requirements”). The Design-Builder certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Design-Builder or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Design-Builder or its Subcontractors derived from this Contract. The Design-Builder shall identify and provide the State with notice of those employees of the Design-Builder and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Design-Builder provide it with whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any Work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any Work performed hereunder is in conflict with any of the Ethics Requirements.

The Design-Builder shall establish a practice of obtaining a list of all staff proposed by vendors and reviewing it to identify any former State employees. If a former State employee is identified, the Design-Builder shall review their employment history to ensure their participation is appropriate and allowable under the Public Officers Law. The Proposer shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this solicitation. If a conflict does or might exist, please describe how your firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

The Proposer shall disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, “Commission”), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

ARTICLE 20. LICENSING. In addition to any required licensure or permit specified in the Contract Documents, any professional services regulated by Articles 145, 147, and 148 of the New York State Education Law performed in furtherance of this Contract shall be performed by a licensed professional in accordance with such laws.

ARTICLE 21. DBE/MBE/WBE/SDVOB GOALS. DBE/MBE/WBE/SDVOB refers to a Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), Women’s Business Enterprise (WBE), or Service-Disabled Veteran-Owned Business (SDVOB). The DBE Program applies to Federal-Aid contracts and the MBE Program, WBE Program and SDVOB Program applies to Non-Federal-Aid contracts. The DBE/MBE/WBE/SDVOB goal(s) for this Contract for design/construction is shown in RFP Part 1 Appendix C Attachment 3. The Design-Builder must make a good faith effort to meet the goal(s). DB §102-12 sets forth requirements related to DBE/MBE/WBE/SDVOB.

ARTICLE 22. INDEMNIFICATION. The Design-Builder shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors, or omissions of the Design-Builder in connection with its services under the Contract Documents. To the fullest extent permitted by law: (a) the Design-Builder shall indemnify, hold harmless, and release the Department and/or the State of New York, any municipality in which the Work is being performed; and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the Work from suits, claims, actions, damages, and costs of every name and description resulting from the Work under this Contract and until the Final Acceptance thereof; (b) with respect to personal injury or property damage occurring after Final Acceptance and not covered by the indemnity in clause Article 22(a), the Design-Builder shall indemnify, hold harmless, and release the Department and/or the State of New York, any municipality in which the Work is being performed; and/or any public benefit corporation, railroad or public utility from suits, claims, actions, damages, and costs of every name and description resulting from negligent or otherwise tortious acts, errors, or omissions of the Design-Builder in connection with its services under the Contract Documents; and (c) the Design-Builder shall indemnify, hold harmless, and release the Department's Inspector from suits, claims, actions, damages, and costs involving personal injury and property damage resulting from the Design-Builder's Work under the Contract during its prosecution and until the Final Acceptance thereof. The Department may retain such monies from the amount due to the Design-Builder as may be necessary to satisfy any claim for damages recovered against the Department, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work, or the Department's Inspectors. The Design-Builder's obligation under this paragraph shall not be deemed waived by the failure of the Department to retain the whole or any part of such monies due the Design-Builder, or where such suit, action, damages, and/or costs have not been resolved or determined prior to release of any monies to the Design-Builder under the Contract. Such obligation shall not be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Design-Builder, Subcontractors, the Department, the State, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work, or any Department consultants or contractors working relative to the Project.

The Design-Builder has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Article. This obligation shall include the cost of attorney fees, disbursements, costs, and other expenses incurred in connection with such action or proceeding. The provisions of this Article shall survive the expiration or termination of the Contract.

Without limiting the generality of the foregoing, Design-Builder's obligation to indemnify, save harmless and release the Persons identified in this article specifically includes any suits, claims, actions, damages, and costs of every name and description resulting from any spill or release or threatened spill or release of a Hazardous Material (i) attributable to the negligence, willful misconduct or breach of contract by Design-Builder, its Subcontractors or agents, or (ii) which was brought onto the Site by Design-Builder or any of its Subcontractors or agents.

Notwithstanding the foregoing, the Department reserves the right to join such action, at its sole expense, when it determines there is an issue involving a significant public interest.

Such obligation does not extend to those suits, actions, damages, and costs of every name which arise out of the sole negligence of the Department, the State of New York, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work of the Project, or any Department consultants or contractors working relative to the Project, their agents, or their employees.

ARTICLE 23. LIQUIDATED DAMAGES. Time is an essential element of the Contract, and the Work shall be pursued vigorously to completion. The public is subject to detriment and inconvenience when full use of infrastructure cannot be made because of an incomplete Project. The Design-Builder agrees to the Liquidated Damages provisions in Request for Proposals Part 5 – Special Provisions, and DB §108-03 *Failure to Complete Work on Time*.

ARTICLE 24. INDEPENDENT CONTRACTOR. The Design-Builder agrees to the terms as an Independent Contractor described in DB §107-01 *Laws, Rules, Regulations and Permits*.

ARTICLE 25. VENDOR RESPONSIBILITY.

The Design-Builder shall comply with Vendor Responsibility requirements as set forth in the DB §105-05 *Vendor Responsibility*.

ARTICLE 26 INSURANCE.

The Design-Builder shall comply with the insurance requirements set forth in DB §107-06 *Insurance*.

IN WITNESS WHEREOF, this Agreement has been executed by the State, acting by and through the Commissioner of Transportation, and the Design-Builder or his appointed representative, who has executed this Agreement on the day and year written below.

[Design-Builder Firm Name]

(Printed Name, Title)

Signature

Agency Certification(s)

The New York State Department of Transportation has undertaken an affirmative review of the proposed Design-Builder's responsibility in accordance with the standards outlined Office of the State Comptroller's *Guide to Financial Operations*, Chapter XI.16 and based upon such review, has reasonable assurance that the proposed Design-Builder is responsible.

All information provided with respect to the requirements contained in State Finance Laws 139J and 139K is complete, true and accurate. All requirements for State Finance Laws 139J and 139K have been met and the appropriate documentation is attached.

In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Department of Transportation

Recommended by: _____

Approved by: _____

Date

ATTORNEY GENERAL:

FOR STATE COMPTROLLER:

Approved _____ Approved _____

THIS CONTRACT IS NOT TO BE EXECUTED OR BECOME EFFECTIVE UNTIL IT SHALL FIRST BE APPROVED BY THE STATE COMPTROLLER AND FILED IN HIS OFFICE. (Section 112, State Finance Law.)

(Acknowledgment of Design-Builder, if a Joint Venture)

A Joint Venture shall include a separate, signed and notarized copy of the acknowledgment page for each party in the Joint Venture.

(Acknowledgment of individual Design-Builder)

STATE OF NEW YORK _____ ss.:
COUNTY OF _____

On this _____ day of _____, 20____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same.

Notary Public

(Acknowledgment of co-partnership Design-Builder)

STATE OF NEW YORK _____ ss.:
COUNTY OF _____

On this _____ day of _____, 20____, before me personally came _____ to me known and known to me to be the person who executed the foregoing instrument, who, being duly sworn by me, did for himself/herself/themself depose and say that he/she/they is a member of the firm of _____, consisting of himself/herself/themself and _____ and that he/she/they executed the foregoing instrument and that he/she/they had authority to sign same, and he/she/they did duly acknowledge to me that he/she/they executed the same as the act and deed of said firm for the uses and purposes mentioned therein.

Notary Public

(Acknowledgment of Design-Builder, if a corporation)

STATE OF NEW YORK _____ ss.:
COUNTY OF _____

On this _____ day of _____, 20____, before me personally came _____ to me known, and known to me to be the person who being duly sworn, did depose and say that he/she/they resides in _____ that he/she/they is the _____ of _____ the _____

New York State Department of Transportation

corporation described in and which executed the foregoing instrument; and that he/she/they signed his/her/their name thereto by order of the Board of Directors of said Corporation.

Notary Public

(Acknowledgment of Design-Builder, if a limited liability company)

STATE OF NEW YORK

ss.:

COUNTY OF

On this day of 20, before me personally came to me known, and known to me to be the person who being duly sworn, did depose and say that he/she/they resides in ; that he/she/they is the duly authorized member of the limited liability company described in and which executed the foregoing instrument; and that he/she/they executed the foregoing instrument on behalf of the limited liability company for the purposes set forth therein as the act and deed of said limited liability company.

Notary Public

[Appendix A, Standard Clauses for All NYS Contracts inserted here]

**STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
DB AGREEMENT**

Contract

County(ies):-

THIS AGREEMENT, made by and between THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as 'State', acting by and through the Department of Transportation, pursuant to the Highway Law, and

☐ an individual conducting business as:
☐ a partnership, consisting of:
☐ a corporation organized and existing under the laws of the State of:
☐ a limited liability company (LLC), organized under the laws of the State of:
☐ a joint venture, consisting of:
the location of whose principal office is:
hereinafter called the "Design-Builder".

WITNESSETH: That the State and the Design-Builder, for the consideration hereinafter named agree as follows:

ARTICLE 1. WORK TO BE DONE. The Design-Builder shall (a) furnish all the materials, appliances, tools and labor of every kind required, and construct and complete in the most substantial and skillful manner, the design, construction, improvement or reconstruction of the project on or before the completion date(s) described in Article 4, and in accordance with the Contract Documents entitled:

[Contract Description]

F.A. Project Number:

in the County(ies) listed above which constitutes contract D900054

~~in accordance with DB Section 100 and the "Standard Specifications" of the New York State Department of Transportation, which contain the information for proposers; contract agreement, and bonds; and (b) do everything required by the Contract and/or Contract Documents as defined herein.~~

~~—The Design Builder further agrees their price proposal is not based upon the assumption that any specifications, traffic restrictions, scheduling or phasing/staging requirements will be waived; an extension of Contract Completion Date will be granted; a labor dispensation will be granted; substitution of non-approved products, alternatives or claimed functional equivalents for specified construction materials and methods will be allowed; or any Value Engineering Change Proposals will be approved.~~

~~—As full compensation for the Work, the Department will pay the Design Builder a lump sum of \$_____, which shall equal the total lump sum proposal price for the Project, as agreed to by the Department, less the unused portion of the lump sum price for the Design-Build Extra Work (Item 800.0400NN15). See also DB §109-05-B. The Contract Amount may be subject to adjustment from time to time by Change Orders.~~

~~—In accordance with Section 41 of the New York State Finance Law, this Contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State beyond moneys available for the purpose thereof.~~

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT. ~~The Contract (and Contract Documents) shall be deemed to include the executed DB Agreement (Appendix A *Standard Clauses for New York State Contracts*, Appendix B *Federal Requirements*, and Appendix C *State Prevailing Wage Rates* (RFP Part 1); DB Section 100 *General Provisions* and the referenced sections of the *Standard Specifications* of the New York State Department of Transportation, Section 100, effective at the time of the Proposal Due Date, as adopted by the Department (RFP Part 2); the *Project Requirements* (RFP Part 3); the *Utility Requirements* (RFP Part 4); the *Special Provisions* (RFP Part 5); the *Directive Plans* included in the *RFP Plans* (RFP Part 6); the *Engineering Data* (RFP Part 7); the *Special Specifications* (Part 8 of RFP); and the *Design Builder's Proposal*, including all addenda or appendices thereto (RFP Part 9); *RFP Addenda* (RFP Part 10); the *Standard Specifications* of the New York State Department of Transportation, Sections 200 through 700, in effect as of the Proposal Due Date, as adopted by the Department, except to the extent that they are modified by the *Special Provisions* (RFP Part 5); *RFP Instructions to Proposers*; any supplemental agreements, amendments, *Orders on Contract*, *Contract modifications*, including those made after execution of the Contract; and all provisions required by law to be inserted in the Contract, whether actually inserted or not. Whenever separate publications are referenced in the Contract Documents it shall mean those, as amended, which are current as of the Proposal Due Date.~~

~~The components of the Contract Documents are intended to be complementary and to describe and provide for a complete Project. The following components of the Contract Documents complement one another in the following declining order of precedence:~~

- ~~A. Appendix A, *Standard Clauses for New York State Contracts*;~~
- ~~B. Appendix B *Federal Requirements* (including Attachment 1, FHWA Form 1273; Attachment 2, *Federal Prevailing Wage Rate*; Attachment 3, *Goals for Equal Employment Opportunity (EEO) Participation*; Attachment 4, *Goals for Disadvantaged/Minority/Women's Business Enterprise (D/M/WBE) Participation*; and Attachment 5, *Supplemental Title VI Provisions (Civil Rights Act)*); and Attachment 6, *Cargo Preference Act Requirements*;~~
- ~~C. Appendix C *State Prevailing Wage Rates*;~~
- ~~D. DB Agreement (other than Appendix A, B, and C);~~
- ~~E. Parts 3 through 8 of RFP and Part 10 of RFP;~~
- ~~F. DB Section 100 *General Provisions* (Part 2 of RFP);~~
- ~~G. The *Standard Specifications* of the New York State Department of Transportation, current on the Proposal Due Date, Sections 200 through 700;~~
- ~~H. The *RFP Instructions to Proposers*; any other *RFP Addenda*; and~~
- ~~I. *Design Builder's Proposal*, including all addenda or appendices thereto (Part 9) (except as provided below).~~

~~However, where the Design-Builder's Proposal presents Work or products of a higher quality than that shown elsewhere in the Contract Documents, and the Department has accepted the proposed change to the Work and products to that of a higher quality, the Design-Builder's Proposal will take precedence for that specific higher quality Work and products, as applicable. Additionally, subject to Part 2, DB Section 100 General Provisions, DB Section 104-11, where the Design-Builder's Proposal includes an approved Alternative Technical Concept, the Design-Builder's Proposal (including the approved Alternative Technical Concept) will take precedence for that specific Work that is the subject of the approved Alternative Technical Concept.~~

~~**ARTICLE 3. EXAMINATION OF DOCUMENTS AND SITE.** The Design-Builder agrees that before making its proposal it carefully examined the contract documents, together with the site of the proposed Work, as well as its surrounding territory, _____ and is informed regarding all of the conditions affecting the Work to be done and labor and materials to be furnished for the _____ completion of this contract, including the existence of poles, wires, pipes and other facilities and structures of municipal and other public service corporations on, over or under the site, except latent conditions that meet the requirements of DB §104-03 *Differing Site Conditions*, and that its information was secured by personal and other investigation and research.~~

~~**ARTICLE 4. DATE OF COMPLETION.** The Design-Builder further agrees that it will begin the Work herein embraced upon receipt of the Notice to Proceed (NTP), unless the consent of the State, in writing, is given to begin at a later date, and that it _____ will prosecute the same so that the Interim Completion Milestone Date(s) shown Article 4.1, if applicable, shall be achieved, and that the project shall be entirely completed and performed on or before the completion date shown in Article 4.2.~~

~~**Article 4.1 Interim Completion Milestone Date(s).** The Project's Interim Completion Milestone Date shall be based on the Design-Builder's Proposal, more specifically the number of calendar days past the Notice to Proceed (NTP) date issued by the Department. The number of calendar days past the NTP is found on the Schedule of Contract Durations form SCD as part of the Design-Builder's Proposal.~~

~~_____ No extension beyond the Interim Completion Milestone Date(s) fixed by the terms of this Contract shall be effective unless in writing signed by the State in accordance with the terms of State Finance Law 112. Any extension shall be for such time and terms and conditions as shall be fixed by the State, which may include the assessment of liquidated damages and a charge for engineering charges associated with Quality Assurance of design and construction activities or other expenses.~~

~~_____ Notice of application for such extension shall be filed with the Department's Project Manager at least 15 days prior to the Interim Completion Milestone Date(s) fixed by the terms of this Contract.~~

~~**Article 4.2 Project Completion Date.** The Project's Completion Date shall be based on the Design-Builder's proposal, more specifically the number of calendar days past the Notice to Proceed (NTP) date issued by the Department. The number of calendar days past the NTP is found on the Schedule of Contract Durations form SCD as part of the Design-Builder's Proposal.~~

~~_____ No extension beyond the Project Completion Date fixed by the terms of this Contract shall be effective unless in writing signed by the State. Any extension shall be for such time and terms and conditions as shall be fixed by the State, which may include the assessment of liquidated damages and a charge for engineering, inspection, or other expenses.~~

~~_____ Notice of application for such extension shall be filed with the Department's Project Manager at least 15 days prior to the Project Completion Date fixed by the terms of this Contract.~~

~~**ARTICLE 5. ALTERATIONS AND OMISSIONS.** The said Work shall be performed in accordance with the true intent and meaning of the contract documents without any further expense of any nature whatsoever to the State other than the consideration named in this agreement. _____~~

~~_____ The State reserves the right, at any time during the progress of the Work, to alter the Scope of Work or omit any portion of the Work as it may deem reasonably necessary for the public interest making allowances for additions and deductions with compensation made in accordance with the contract. This right includes making allowances for additions and deductions, with compensation made in accordance with the Contract Documents for the altered or omitted Work.~~

ARTICLE 6. NO COLLUSION OR FRAUD. The Design-Builder hereby agrees that the only person or persons interested as —principal or principals in the proposal submitted by the Design-Builder for this contract are named therein, and that no person other than those mentioned therein has any interest in the above mentioned proposal or in securing of the award, and that this contract has been secured without any connection with any person or persons other than those named, and that the proposal is in all respects fair and was prepared and the contract was secured without collusion or fraud and that neither any officer nor employee of the State Department of Transportation has or shall have a financial interest in the performance of the contract or in the supplies, Work or business to which it relates, or in any portion of the profits thereof. (See also §139-a and §139-b of the State Finance Law referred to in the Standard Specifications which are made a part of this contract by reference.)

ARTICLE 7. CONTRACT PAYMENTS. As the Work progresses in accordance with the contract and in a manner that is satisfactory to the State, the State hereby agrees to make payments to the Design-Builder therefore, based upon the proposal —attached hereto and made a part hereof, as follows: The State shall once in each month and on such days as it may fix, determine the quantity of work completed and of material which has actually been put in place in accordance with the terms —and conditions of the contract, during the preceding month, and compute the value thereof and pay to the Design-Builder the —monies due as provided in §38(7) of the Highway Law. No monthly payment shall be rendered unless the value of the work completed equals 5% of the contract amount or \$1,000, whichever is the lesser. Semimonthly payments may be rendered —provided (a) the value of the work performed in two successive weeks is more than \$50,000 or (b) the Commissioner of —Transportation deems it to be in the best interests of the State to do so. The Design-Builder shall not hold any retainage from any Subcontractor.

The Design-Builder agrees to the terms for Periodic Payments described in Part 2, DB Sections 109-01, 109-06.

ARTICLE 8. NO PAYMENT DUE TO DESIGN-BUILDER'S NON-COMPLIANCE. It is further agreed that so long as any lawful or proper direction concerning the Work or material given by the Commissioner of Transportation, or his/her representative, shall remain uncomplied with, the Design-Builder shall not be entitled to have said contract payment processed, nor shall any contract payment(s) be processed for work done or material furnished until such lawful or proper direction aforesaid has been fully and satisfactorily complied with.

ARTICLE 9. FINAL ACCEPTANCE OF WORK. When in the opinion of the Regional Director a Design-Builder has fully performed the Work under the contract, the Regional Director shall recommend to the Commissioner of Transportation the acceptance of the Work so completed. If the Commissioner accepts the recommendation of the Regional Director, he/she shall thereupon by letter notify the Design-Builder, with copies to other interested parties, of such acceptance. Prior to the final acceptance of the Work by the Commissioner or his/her designee, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the Work after final acceptance. —Final acceptance shall be final and conclusive except for defects not readily ascertainable by the Department, actual or constructive, fraud, gross mistakes amounting to fraud or other errors which the Design-Builder knew or should have known about as well as the Department's rights under any warranty or guarantee. Final acceptance may be revoked by the Department at any time prior to the issuance of the final check by the Comptroller upon the Department's discovery of such defects, mistakes, fraud or errors in the work.

ARTICLE 10. FINAL PAYMENT. After the final acceptance of the Work, the Department's Project Manager shall prepare a final agreement of the Work performed and the materials placed and shall determine the value of such work and materials under and according to the terms of the contract. This final agreement shall be certified, as to its correctness, by the Department's Project Manager. Upon approval of such final agreement by the Regional Director, it shall be submitted to the Commissioner for final approval. The right, however, is hereby reserved to the Commissioner to reject the whole or any portion of the final agreement, should the said certificate of the Department's Project Manager be found or known to be inconsistent with the terms of the agreement or otherwise improperly given. All certificates upon which partial payments may have been made shall be subject to

~~correction in the final certificate or final agreement.~~

ARTICLE 11. RIGHT TO SUSPEND WORK AND CANCEL CONTRACT. It is further mutually agreed that if at any time during the prosecution of the Work the Commissioner of Transportation shall determine that the Work upon the contract is not being performed according to the contract or for the best interest of the State, the execution of the Work by the Design-Builder may be temporarily suspended by the Commissioner of Transportation, who may then proceed with the work under his/her own direction in such manner as will accord with the contract specifications and be for the best interests of the State; or he/she may terminate the Design-Builder's employment under the contract while it is in progress, and thereupon proceed with the Work, in affirmance of the contract, by contract negotiated or publicly let, by the use of his/her own forces, by calling upon the surety to complete the Work in accordance with the contract documents or by a combination of any such methods; or he/she may cancel the contract and either readvertise as provided in Section 38 of the Highway Law, or complete the Work under its own direction in such a manner as will accord with the contract specifications and be for the interests of the State; Any excess in the cost of completing the contract beyond the price for which it was originally awarded shall be charged to and paid by the Design-Builder failing to perform the Work or its surety; all in pursuance of the provisions of Section 40 of the Highway Law.

In the event of suspension or termination the Design-Builder shall be paid its costs, including contract close-out costs, and profit on work satisfactorily performed and project design costs actually incurred up to the time of termination, less an amount necessary to satisfy any claims, liens or judgments against the Design-Builder. The Design-Builder shall promptly submit its termination claim. The Design-Builder will only be paid the contract price for materials delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract, less an amount necessary to satisfy any claims, liens or judgments against the Design-Builder.

—Whenever the State determines to suspend or stop work under the contract, a written notice sent by mail to the Design-Builder at its address and to the sureties at their respective addresses, shall be sufficient notice of its action in the premises.

ARTICLE 12. DETERMINATION AS TO VARIANCES. In any case of any ambiguity in the Contract Documents or between any parts of the Contract Documents, the matter must be immediately submitted to the Department's Project Manager, who shall adjust the same, and his/her decision in relation thereto shall be final and conclusive upon the parties.

ARTICLE 13. SUCCESSORS AND ASSIGNS. This agreement shall bind the successors, assigns and representatives of the parties hereto.

ARTICLE 14. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with §139-h of State Finance Law, the Design-Builder hereby promises, asserts and represents that neither the Design-Builder nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, or the effective Regulations of the United States Department of Commerce promulgated under either act.

—It is understood further that the State in awarding a contract does so in material reliance upon the promise and representation made by the Design-Builder in the forgoing paragraph and that such contract shall be rendered forfeit and void by the State Comptroller if subsequent to the bid execution date, the Design-Builder or such owned or affiliated person, firm, partnership or corporation has been convicted of a violation of the aforesaid Acts or Regulations or has been found upon final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated such Acts or Regulations.

—The Design-Builder agrees to and shall notify the Commissioner of Transportation, the Director of the Contract Management Bureau and State Expenditures in the Office of the State Comptroller of any such conviction or final determination of violation within five (5) days thereof.

ARTICLE 15. WRITTEN NOTICES.

—1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- a. via certified or registered United States mail, return receipt requested;
- b. by facsimile transmission;
- c. by personal delivery;

New York State Department of Transportation

~~—d. by expedited delivery service; or~~

~~—e. by e-mail.~~

~~—Such notices shall be addressed to the individuals or titles named in the contract documents, or which are designated by the Design-Builder or the State at the pre-construction meeting, or which are designated by the State or the Design-Builder from time to time during the course of the Contract pursuant to Paragraph 3 herein.~~

~~—2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.~~

~~—3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.~~

~~—4. The following information is the contact information for the Department's Project Manager. The Department's Project Manager will serve as the main point of contact for the Design-Builder. All notices should be sent to the Department's Project Manager at the following address:~~

~~Name: _____~~

~~Address: _____~~

~~Telephone number: _____~~

~~Email: _____~~

~~—5. The following information is the contact information for the Design-Builder's Project Manager. The Design-Builder's Project Manager will serve as the main point of contact for the State. All notices should be sent to the Design-Builder's Project Manager at the following address:~~

~~Name: _____~~

~~Address: _____~~

~~Telephone number: _____~~

~~Email: _____~~

ARTICLE 16. DESIGN-BUILDER RECEIPT OF PAYMENT. ~~The Design-Builder shall provide complete and accurate information and supporting documentation required by the Contract, the Agency and the Office of the State Comptroller (OSC). Payment will only be rendered electronically, unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment will be made in accordance with ordinary State procedures and practices from the Statewide Financial System (SFS). The Design-Builder shall comply with OSC procedures to authorize electronic payments. Authorization forms are available at OSC's website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by telephone at 855-233-8363. A Design-Builder that has not previously performed work for New York State will be provided a SFS Vendor ID. After obtaining a SFS Vendor ID, the Design-Builder shall contact the OSC Vendor Management Unit at www.osc.state.ny.us/vendor_management/index.htm to set up an eSupplier account, in order to track and manage payments. The Design-Builder will not receive payment under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.~~

ARTICLE 17. SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT). ~~During the performance of this contract, the Design-Builder, for itself, its assignees, and successors in interest (herein after referred to as the "Design-Builder") agree as follows:~~

~~—1. Compliance with Regulations. The Design-Builder shall comply with the Regulation relative to nondiscrimination in federally assisted programs of the Department of Transportation of the United States 49 Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.~~

~~—2. Nondiscrimination. The Design-Builder, with regard to the Work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, and disability/handicap, or income status in the selection and retention of~~

Subcontractors, including procurements of materials and leases of equipment. The Design-Builder shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the contract covers a program set forth in 49 CFR 21 Appendix B.

—3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Design-Builder for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Design-Builder of the Design-Builder's obligations under this contract and 49 CFR 21 relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

—4. Information and Reports. The Design-Builder shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the Design-Builder shall so certify to NYSDOT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

—5. Sanctions for Noncompliance. In the event of the Design-Builder's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: (a.) withholding of payments to the Design-Builder under the contract until the Design-Builder complies, and/or (b.) cancellation, termination or suspension of the contract, in whole or in part.

—6. Incorporation of Provisions: The Design-Builder shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

—The Design-Builder shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a Design-Builder becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Design-Builder may request NYSDOT to enter into such litigation to protect the interests of NYSDOT; and, in addition, the Design-Builder may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 18 CONFLICTS OF INTEREST. Included in paragraph 6 of the JURAT submitted with the Proposal, the Design-Builder has provided a Proposer Assurance of No Conflict of Interest or Detrimental Effect, signed by an authorized executive or legal representative attesting that the Design-Builder's performance of the services does not and will not create a conflict of interest with, nor position the Design-Builder to breach any other contract currently in force with the State of New York, that the Design-Builder will not act in any manner that is detrimental to any State project on which the Design-Builder is rendering services.

—The Design-Builder hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Design-Builder's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. The Design-Builder shall have a duty to notify the Department immediately of any actual or potential conflicts of interest.

—In conjunction with any subcontract under this Agreement, the Design-Builder shall obtain and deliver to the Department, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Design-Builder shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Department a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

—The Department and the Design-Builder recognize that conflicts may occur in the future because the Design-Builder may have existing, or establish new, relationships. The Department will review the nature of any relationships and reserves the right to terminate this Agreement for any reason, or for cause, if, in the judgment of the Department, a real or potential conflict of interest cannot be cured.

ARTICLE 19 ETHICS REQUIREMENTS. The Design-Builder and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law,

other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Design-Builder certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Design-Builder or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Design-Builder or its Subcontractors derived from this Contract. The Design-Builder shall identify and provide the State with notice of those employees of the Design-Builder and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Design-Builder provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

—Establish a practice of obtaining a list of all staff proposed by vendors and reviewing it to identify any former State employees. If a former State employee is identified, review his/her employment history to ensure it is appropriate and allowable under the Public Officers Law.

—A. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this solicitation. If a conflict does or might exist, please describe how your firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

—B. The Proposer shall disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

ARTICLE 20 LICENSING. Any professional services regulated by Articles 145, 147, and 148 of the New York State Education Law to be performed under this Contract shall be performed by a professional licensed in accordance with such articles.

ARTICLE 21 DISADVANTAGED BUSINESS ENTERPRISE GOALS. D/M/WBE is a general term that refers to a Disadvantaged Business Enterprise (DBE), a Minority Business Enterprise (MBE), or a Women's Business Enterprise (WBE). The DBE Program applies to Federal Aid contracts, and the MBE/WBE (MAWBE) Program applies to Non-Federal Aid contracts. The D/M/WBE goal for this Contract for design/construction is shown in the RFP Part 1 Appendix B Attachment 4. The Design-Builder must make a good faith effort to meet this goal. See DB §102-12 *D/M/WBE Utilization* for more information on the D/M/WBE Program.

ARTICLE 22 INDEMNIFICATION. The Design-Builder shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of the Design-Builder in connection with its services under the Contract Documents. To the fullest extent permitted by law: (a) the Design-Builder shall indemnify, hold harmless, and release the Department and/or the State of New York, any municipality in which the Work is being performed; and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the Work from suits, claims, actions, damages, and costs of every name and description resulting from the Work under this Contract and until the Final Acceptance thereof; (b) with respect to personal injury or property damage occurring after Final Acceptance and not covered by the indemnity in clause Article 22(a), the Design-Builder shall indemnify, hold harmless, and release the Department and/or the State of New York, any municipality in which the Work is being performed; and/or any public benefit corporation, railroad or public utility from suits, claims, actions, damages, and costs of every name and description resulting from negligent or otherwise tortious acts, errors or omissions of the Design-Builder in connection with its services under the Contract Documents; and (c) the Design-Builder shall indemnify, hold harmless, and release the

~~Department's Inspector from suits, claims, actions, damages, and costs involving personal injury and property damage resulting from the Design-Builder's Work under the Contract during its prosecution and until the Final Acceptance thereof. The Department may retain such monies from the amount due the Design-Builder as may be necessary to satisfy any claim for damages recovered against the Department, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work, or the Department's Inspectors. The Design-Builder's obligation under this paragraph shall not be deemed waived by the failure of the Department to retain the whole or any part of such monies due the Design-Builder, or where such suit, action, damages, and/or costs have not been resolved or determined prior to release of any monies to the Design-Builder under the Contract. Such obligation shall not be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Design-Builder, Subcontractors, the Department, the State, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work, or any Department consultants or contractors working relative to the Project.~~

~~—The Design-Builder has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Article. This obligation shall include the cost of attorney fees, disbursements, costs, and other expenses incurred in connection with such action or proceeding. The provisions of this Article shall survive the expiration or termination of the Contract.~~

~~—Without limiting the generality of the foregoing, Design-Builder's obligation to indemnify, save harmless and release the Persons identified in this article specifically includes any suits, claims, actions, damages, and costs of every name and description resulting from any spill or release or threatened spill or release of a Hazardous Material (i) attributable to the negligence, willful misconduct or breach of contract by Design-Builder, its Subcontractors or agents, or (ii) which was brought onto the Site by Design-Builder or any of its Subcontractors or agents.~~

~~—Notwithstanding the foregoing, the Department reserves the right to join such action, at its sole expense, when it determines there is an issue involving a significant public interest.~~

~~—Such obligation does not extend to those suits, actions, damages, and costs of every name which arise out of the sole negligence of the Department, the State of New York, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work of the Project, or any Department consultants or contractors working relative to the Project, their agents, or their employees.~~

ARTICLE 23 LIQUIDATED DAMAGES. ~~Time is an essential element of the Contract, and it is important that the Work be pursued vigorously to completion. The public is subject to detriment and inconvenience when full use of infrastructure cannot be made because of an incomplete Project. The Design-Builder agrees to the liquidated damages provisions in the Contract Documents, Part 5—Special Provisions, SP-6, and Contract Document, Part 2, DB §108-03.~~

ARTICLE 24 INDEPENDENT CONTRACTOR. ~~The Design-Builder agrees to the terms as an Independent Contractor described in Part 2, DB §107-01 B.~~

ARTICLE 25 NO CONFLICT OF INTEREST. ~~The Design-Builder hereby agrees that this Contract has been secured without any apparent or real conflict of interest that would (1) compromise the integrity and fairness of the procurement process; (2) create circumstances where the Design-Builder obtained or appeared to obtain an unfair competitive advantage in accordance with 23 CFR 1.33 and 23 CFR 636.116; or (3) compromise the interests of the Department and the People of the State of New York.~~

~~—The Design-Builder further agrees that the Contract was secured without collusion or fraud and that neither any officer nor employee of the Department of Transportation has or shall have a financial interest in the performance of the Contract or in the supplies, Work or business to which it relates, or in any portion of the profits thereof. (See also §139-a and §139-b of the State Finance Law.)~~

ARTICLE 26 FEDERAL REQUIREMENTS. ~~For Federal Aid contracts, refer to RFP Part 1 Appendix B for the required federal requirements (including Attachment 1, FHWA Form 1273; Attachment 2, Federal Prevailing Wage Rate; Attachment 3, Goals for Equal Employment Opportunity (EEO) Participation; and Attachment 4, Goals for Disadvantaged Business Enterprise (DBE) Participation). See also Article 2 regarding the precedence of the federal requirements to the rest of the Contract Documents.~~

New York State Department of Transportation

ARTICLE 27 DESIGN-BUILDER LIABILITY. ~~1. The Design-Builder shall at all times during the contract term remain responsible. The Design-Builder agrees, if requested by the Commissioner of Transportation or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.~~

~~2. In addition to any and all other suspension rights provided elsewhere in this Contract, the Commissioner of Transportation or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Design-Builder. In the event of such suspension, the Design-Builder will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Design-Builder must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Transportation or his or her designee issues a written notice authorizing a resumption of performance under the Contract.~~

~~3. In addition to any and all other termination rights provided elsewhere in this Contract, upon written notice to the Design-Builder and a reasonable opportunity to be heard with appropriate Department officials or staff, the Contract may be terminated by the Commissioner of Transportation or his or her designee at the Design-Builder's expense where the Design-Builder is determined by the Commissioner of Transportation or his or her designee to be non-responsible. In such event, the Commissioner of Transportation or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.~~

ARTICLE 28. INSURANCE PROGRAM

~~The Design-Builder shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract including any extensions or renewals until Contract Final Acceptance, the policies of insurance covering all operations under the contract whether performed by it or its subcontractors as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of (A-) or better or approved by the Department. The Department may, at its sole discretion, permit the placement of policies with a non-authorized carrier or carriers upon request by the Design-Builder accompanied by the documentation required by 11 NYCRR §27.0 et seq.; provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. The Design-Builder shall deliver to the Department evidence of such policies as the Department deems necessary to verify that the required insurance is in effect.~~

~~**Conditions Applicable to Insurance.** All policies of insurance required by this agreement must meet the following requirements:~~

~~**Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Design-Builder are specified in Paragraph B Insurance Requirements below. General liability insurance shall apply separately on a per-job or per-project basis.~~

~~**Policy Forms.** Except as may be otherwise specifically provided herein or agreed in writing by the Department, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.~~

~~**Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) or that remove or modify the "insured contract" exception to the employer's liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or Subcontractors, are not acceptable.** Policy forms must be provided to the Department upon request.~~

~~**Certificates of Insurance/Notices.** Design-Builder shall provide a Certificate or Certificates of Insurance, in a form~~

New York State Department of Transportation

satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference the NYSDOT Contract D-Number and the name of the contractor in the Subject Line, by email to: Insur.constr.contr@dot.ny.gov

Certificates shall be mailed to the:

New York State Department of Transportation Contract Management Bureau
50 Wolf Road, First Floor, Suite 1CM Albany, NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon ten (10) days' prior written notice to the Department by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the Department, the Design-Builder shall deliver to the Department within ten (10) work days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall: Be in a form satisfactory to the Department. The ACORD 25 Certificate must be accompanied by an ACORD 855 "New York Construction Addendum" completed to indicate information about the liability insurance of Insurance. Be signed and dated by an authorized representative of the insurance carrier or producer. Disclose any deductible, self-insured retention, aggregate limit. Refer to this Contract by number on the face of the certificate.

If at any time during the term of this contract, it shall come to the attention of the Department that required insurance is not in effect or that adequate proof of insurance has not been provided, the Department may, at its option:

Direct the Design-Builder to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or
May withhold further contract payments in accordance with Article 8 No Payment Due to Design-Builder's Non-Compliance of the contract agreement, or
Treat such failure as a breach or default of the contract.

Additional Insureds. All insurance policies required by these specifications, except workers' compensation and professional liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work, and any consultants working for or on the project, and their agents or employees"** with respect to any claim arising from the Design-Builder's Work under this contract or as a result of the Design-Builder's activities. The endorsement shall be affected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a form(s) that provides equivalent coverage.

Primary Coverage. The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the Department for any claim arising from the Design-Builder's Work under this contract, or as a result of the Design-Builder's activities.

Waiver of Subrogation. As to every type and form of insurance coverage required from the Design-Builder, there shall be no right of subrogation against **the State of New York/New York State Department of Transportation**, its agents or employees. To the extent that any of Design-Builder's policies of insurance prohibit such a waiver of subrogation, Design-Builder shall secure the necessary permission to make this waiver.

Policy Renewal/Expiration. At least ten (10) calendar days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in Paragraph A.3. Certificates

~~of Insurance/Notices above.~~

~~Self-Insured Retention/Deductibles.~~ Design Builders utilizing self insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. ~~Except as may be specifically provided in the Contract Documents of a particular project, the Design-Builder or third-party-administered insurance deductible shall be limited to the amount of the bid deposit or \$1,000,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The Design-Builder shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the Design-Builder's deductible in a self-administered program exceeds the amount of the bid deposit, the Design-Builder shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of (A -) or better. If, at any time during the term of this agreement, the Department, in its sole discretion, determines that the Design-Builder is not paying its deductible, it may require the Design-Builder to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the Design-Builder.~~

~~Waiver of Indemnities.~~ The Design-Builder waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this contract. The Design-Builder waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.

~~Subcontractor's Liability Insurance.~~ In the event that any portion of the Work described in this contract is performed by an approved subcontractor, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subcontractor insurance requirements shall include the requirements for Workers' Compensation, Commercial General Liability, and, if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subcontractors. Design-Builder shall require that Certificates of Insurance, meeting the requirements of the Department are provided to the Department documenting the insurance coverage for each and every subcontractor employed by them to do work under this contract.

~~Insurance Requirements.~~ The types of insurance and minimum policy limits shall be as follows:

~~Workers' Compensation and Disability Insurance.~~ As required by State Finance Law §142, the Design-Builder shall maintain in force workers' compensation insurance upon forms required by or acceptable to the Workers Compensation Board for all of Design-Builder's employees. Design-Builder shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.

~~Commercial General Liability Insurance.~~ The Design-Builder shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Design-Builder. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than the amounts called for in Table 107-1. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:

~~Coverage for contractual liability assumed by the Design-Builder insured under an insured contract (including the tort liability of another assumed in a business contract).~~

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~~All insurance policies required by these specifications except workers' compensation and professional liability shall be endorsed to provide coverage to "the State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work, or any consultant inspecting engineer or inspector working for or on the project, and their agents or employees" using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.~~

~~Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.~~

~~Where contract work will be performed by unregistered off-road equipment, Design-Builder shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short-term pollution events, ISO form CG 04 33 10 01 or equivalent.~~

~~Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.~~

~~Explosion, Collapse and Underground Hazards coverage ("XCU") (for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment).~~

~~**Commercial Automobile Insurance including liability and required coverage for New York.** (applicable to any project where automobiles or other vehicles will be employed to complete the Work). In the event that automobiles are used in connection with Design-Builder's business or operations with the Department, the Design-Builder shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of Design-Builder's automobiles (including owned, hired and non-owned vehicles) on and around the project. This should be ISO form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000 each accident.~~

~~**Umbrella or Excess Liability Insurance.** The Design-Builder shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent Contractors, products-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Design-Builder or arising from automobile liability as described above. Such coverage shall be written on an ISO occurrence form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide, when combined with the Commercial General Liability Insurance, a total of not less than the amount called for in Table 107-1.~~

~~**Special Protective and Highway Liability Policy.** The Design-Builder shall maintain, separate and apart from its umbrella policy, a policy issued to and covering the liability of the People of the State of New York, The State of New York, the Commissioner of Transportation, all employees of the Department of Transportation, any municipality in which the Work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the Work, against damages that the insureds may be held legally liable to pay for property damage, personal injuries, or death that is caused by any occurrence that takes place within any location where work is to be or is being performed by Design-Builder, including at the location of any of the Work. This should be ISO form CG 00 14 12 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than the amount(s) called for in Table 107-1.~~

~~Contractor's Risks~~ *(applicable to all contracts).* ~~The Design-Builder shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event, shall the Department be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.~~

~~Professional Liability/ Errors and Omissions.~~ *(applicable to professional services requiring the signature, stamp or certification of a licensed professional, including, without limitation, erection plans, demolition plans, containment plans, coffer dams, and temporary sheeting.)* ~~The Design-Builder shall maintain at its own expense or shall require to be maintained, such insurance as is customary to compensate the Department for any claims or losses that occur because of Design-Builder's errors, omissions malpractice or breach of professional obligations. Such policy or policies may be written on a claims-made form so long as coverage is maintained to be in effect to cover claims arising from the performance of services under this contract. Said coverage may be subject to a deductible or self-insured retention level of no more than \$500,000. subject to approval by the Department, such approval not to be unreasonably withheld, except that it is also agreed that the Department may withhold payment for services rendered under this contract in the event, and to the extent of any deductible in the event that a claim is asserted. Such coverage shall be written on a claims-made basis (or a policy form providing equivalent coverage) in an amount of no less than the amount(s) called for in Table 107-1.~~

~~Railroad Protective Liability Insurance.~~ *(applicable to any Work Affecting Railroads as described in §105-09.)* ~~The Design-Builder shall maintain at its own expense railroad protective liability policy of insurance in the name of the affected railroad and with limits of coverage as specified in the Special Notes on Railroad Insurance, or if no limits of coverage are specified, the limits shall be not less than the amount(s) called for in Table 107-1. Aggregate Limit applying separately to each annual period. Said policy shall be subject to the approval of the railroad and comply with 23 CFR 646 Subpart A.~~

~~Marine Protection & Indemnity.~~ *(applicable to any Work performed on a navigable waterway using barges or another watercraft).* ~~Anytime the activity involves work on navigable water or the Work is connected to water related activities, Marine Protection & Indemnity and Hull and Machinery coverage is required. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Design-Builder shall obtain Protective and Indemnity Liability insurance for all marine operations under the Agreement, with a minimum (\$1,000,000.) limit. The policy shall be endorsed to add the Department as an Additional Insured.~~

~~Pollution Liability Insurance.~~ *(applicable where the Design-Builder will employ mobile equipment or tanks or facilities for fueling vehicles or equipment on-site).* ~~The Design-Builder shall procure and maintain, either through an endorsement to a commercial general liability policy or through a separate policy, insurance protecting Design-Builder and the Department from the liability and financial loss relating to Design-Builder's contamination of soil and the accidental release of petroleum products, chemicals and/or toxic gases from broken pipelines, utilities and stationary and mobile fuel tanks that can result from Design-Builder's operations. Such coverage shall be written on policy form providing coverage for contamination both on and off the leased premises and shall provide coverage in an amount of not less than the amount(s) called for in Table 107-1.~~

~~Builder's Risk Policy.~~ *(applicable to projects that call for the construction of any "Structure" or building, including, but not limited to pump stations and in connection with such projects, as part of a project valued at \$10,000,000 or more and then only to the extent of the value associated with such construction).* ~~The Design-Builder shall procure and maintain a Builder's Risk policy in a form such as ISO form CP 00 20 10 90 or a policy form providing equivalent coverage, covering the perils insured under and including the~~

New York State Department of Transportation

~~special causes of loss form, including collapse. Subject to the allowances stated in Paragraph A. 8. Self-Insured Retention/Deductibles, above, the deductible not to exceed the amount called for in Table 107-1 covering the total value of work performed and equipment, supplies and materials at the location of the Work as well as at any off-site storage locations. Policy shall cover the structures and buildings, supplies and materials at the location of the Work as well as at any off-site storage locations. Sub-limits for loss caused by Flood and Earthquake are acceptable. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of Department held in their care, custody and/or control. Such policy shall name the Design Builder as insured, and The People of the State of New York and Subcontractors as additional insureds.~~

Table of Insurance Requirements

TABLE 107-1 INSURANCE FOR DESIGN-BUILD CONTRACTS					
Insurance Type	Contract Value (Millions)				
	\$10-\$25	\$25-\$50	\$50-\$100	\$100-\$250	Over \$250
Commercial General Liability (CGL)	\$2 million per occurrence; \$4 million aggregate	\$2 million per occurrence; \$4 million aggregate	\$3 million per occurrence; \$6 million aggregate	\$5 million per occurrence; \$10 million aggregate	\$5 million per occurrence; \$10 million aggregate
Commercial Auto	\$1 million per accident	\$1 million per accident	\$1 million per accident	\$1 million per accident	\$1 million per accident
Umbrella / Excess Liability	At least \$5 million when combined with the CGL	At least \$5 million when combined with the CGL	At least \$10 million when combined with the CGL	At least \$25 million when combined with the CGL	At least \$50 million when combined with the CGL
Special Protective & Highway Liability Policy	\$2 million per occurrence; \$4 million aggregate	\$2 million per occurrence; \$4 million aggregate	\$3 million per occurrence; \$6 million aggregate	\$5 million per occurrence; \$10 million aggregate	\$5 million per occurrence; \$10 million aggregate
Professional Liability/ Errors & Omissions	\$2 million per occurrence; \$2 million aggregate	\$3 million per occurrence; \$3 million aggregate	\$4 million per occurrence; \$4 million aggregate	\$5 million per occurrence; \$5 million aggregate	\$10 million per occurrence; \$10 million aggregate
Railroad Protective	\$5 million per occurrence; \$10 million aggregate	\$5 million per occurrence; \$10 million aggregate	\$5 million per occurrence; \$10 million aggregate	\$5 million per occurrence; \$10 million aggregate	\$5 million per occurrence; \$10 million aggregate

TABLE 107-1 INSURANCE FOR DESIGN-BUILD CONTRACTS					
Insurance Type	Contract Value (Millions)				
	\$10-\$25	\$25-\$50	\$50-\$100	\$100-\$250	Over \$250
Marine Protective	\$1 million	\$1 million	\$1 million	\$1 million	\$1 million

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Pollution Legal Liability	\$1 million per occurrence; \$1 million aggregate	\$1 million per occurrence; \$1 million aggregate	\$1 million per occurrence; \$1 million aggregate	\$1 million per occurrence; \$1 million aggregate	\$1 million per occurrence; \$1 million aggregate
Builder's Risk	\$1 million (Deductible \$25,000)	\$2.5 million (Deductible \$50,000)	\$5 million (Deductible \$100,000)	\$10 million (Deductible \$200,000)	\$25 million (Deductible \$500,000)

ARTICLE 29. ~~NON-ASSIGNMENT-CLAUSE~~

~~In accordance with Section 138 of the New York State Finance Law, this Contract may not be assigned by the Design-Builder, or its right, title, or interest therein assigned, transferred, conveyed, sublet, or disposed of without the previous consent, in writing, of the State. Any attempts to assign the Contract without the State's written consent are null and void. The Design-Builder may, however, assign its right to receive payment without the State's prior written consent unless this Contract concerns certificates of participation pursuant to Article 5-A of the New York State Finance Law.~~

ARTICLE 30. ~~SELF PERFORMANCE.~~

~~Design-Builder self performance.~~

~~The Design-Builder shall perform with its own organization Contract Work amounting to not less than 30 percent of the original total Contract Price. The Design-Builder's own organization shall be construed to include only Workers employed and paid directly by the Design-Builder and Equipment owned or rented by it, with or without operators. The Design-Builder's own organization does not include employees or Equipment of a Subcontractor, assignee, or agent of the Design-Builder and/or its Principal Participants, and any firm(s) performing Design, Construction Inspection and Quality Control Services. The Contract amount upon which the 30 percent requirement is computed includes the cost of Materials and manufactured products which are to be purchased or produced by the Design-Builder under the Contract provisions.~~

~~IN WITNESS WHEREOF~~, this agreement has been executed by the State, acting by and through the Commissioner of Transportation, and the Design-Builder or his appointed representative, who has executed this agreement on the day and year _____ written below.

[Design-Builder Firm Name]

(Printed Name, Title) _____ Signature

Agency Certification(s)

~~The New York State Department of Transportation has undertaken an affirmative review of the proposed Design-Builder's responsibility in accordance with the standards outlined Office of the State Comptroller's *Guide to Financial Operations*, Chapter XI.16 and based upon such review, has reasonable assurance that the proposed Design-Builder is responsible.~~

~~All information provided with respect to the requirements contained in state Finance Laws 139J and 139K is~~

New York State Department of Transportation

On this _____ day of _____, 20____, before me personally came _____ to me known and known to me to be the person who executed the foregoing instrument, who, being duly sworn by me, did for himself/herself _____ depose and say that he/she is a member of the firm of _____, consisting of himself/herself _____ and _____ and that he/she executed the foregoing instrument and that he/she had authority to sign _____ same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm for the uses and _____ purposes mentioned therein.

Notary Public

(Acknowledgment of Design-Builder, if a corporation)

STATE OF NEW YORK _____ ss.:

COUNTY OF _____

On this _____ day of _____, 20____, before me personally came _____ to me known, and known to me to be the person who being duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of _____ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

(Acknowledgment of Design-Builder, if a limited liability company)

STATE OF NEW YORK _____ ss.:

COUNTY OF _____

On this _____ day of _____, 20____, before me personally came _____ to me known, and known to me to be the person who being duly sworn, did depose and say that he/she resides in _____; that he/she is the duly authorized member of the limited liability company described in and which executed the foregoing instrument; and that he/she executed the foregoing instrument on behalf of the limited liability _____ company for the purposes set forth therein as the act and deed of said limited liability company.

Notary Public

[Appendix A, Standard Clauses for All NYS Contracts inserted here]

DB 103-07 SAMPLE FORM OF FAITHFUL PERFORMANCE BOND.

NYSDOT Standard Specification §103-07 shall apply.

DB 103-08 SAMPLE FORM OF LABOR AND MATERIAL BOND.

NYSDOT Standard Specification §103-08 shall apply.

be corrected in a manner acceptable to the Design-Builders Responsible Engineer and the Department irrespective of the presence of, or lack of, a CQAE or a representative of the Department at the time the Work was originally completed. The fact that Department representatives may have previously overlooked such defective Work shall not constitute an approval or acceptance of any part of it.

DB 105-12 LOAD RESTRICTIONS.

NYSDOT Standard Specification §105-12 shall apply.

DB 105-13 WORK ZONE TRAFFIC CONTROL FOR MOBILE OPERATIONS.

NYSDOT Standard Specification §105-13 shall apply.

DB 105-14 DISPUTED WORK AND DISPUTE RESOLUTION.

NYSDOT Standard Specification §105-14 shall apply.

~~The dispute resolution process involves the following levels of review / appeals: (1) Project Manager; (2) Regional Director; (3) Director of Project Management Office / Chief Engineer; and (4) Commissioner.~~

DB 105-15 FURNISHING RIGHT OF WAY.

NYSDOT Standard Specification §105-15 shall apply.

DB 105-16 SHOP DRAWING ACCEPTANCE.

A shop drawing is a drawing, diagram, illustration, test data, performance chart, catalog cut, brochure and other data prepared by the Design-Builder, Subcontractor, Manufacturer, Fabricator or Material Supplier for submission to the Department as an illustration of a portion of the work. The Department's acceptance of shop drawings does not relieve the Design-Builder of the responsibility to satisfactorily complete the Work in accordance with the Contract requirements.

Unless otherwise stated in the Contract documents, no portion of the Work requiring shop drawings or a sample of the Work shall be commenced until the submission has been approved by the Design-Builder's Designer of Record and accepted by the Design Quality Assurance Engineer.

Department review of shop drawings will begin only after the submission of a complete set of information required to complete a discrete item of work. Unless stated elsewhere in the Standard Specifications, the review process will allow two work days per drawing submitted or a minimum of 10 days. Submission of materials directly to the Department shall be done only with the approval of the Design-Builder. Complete copies of all submissions shall be provided to the Department's Project Manager and Design Quality Assurance Engineer.

DB 105-17 CONTRACT RECORDS.

NYSDOT Standard Specification §105-17 shall apply.

26.2.2 Height Requirements

Height requirements for the precast concrete noise barrier sections are as follows:

- Minimum top of wall elevations shall be as shown on the Directive Noise Barrier Profile drawings and Noise Barrier Detail drawings in Part 6 – Directive Plans.

The bottom of the concrete noise barrier panels shall be a minimum of 6 inches below the finished grade. Where isolated low points are present on the existing ground, fill material may be used to reduce the post and panel height if approved by the Department's Design Quality Assurance Engineer (DQAE). Where noise barriers are mounted on flat grades, the Design-Builder shall grade finished ground to drain away from noise barrier on both sides of the noise barrier. All disturbed areas shall be restored in accordance with Project Requirements.

All precast noise barrier sections less than 20 feet in height shall ~~either~~ be a single panel. Barriers which exceed 20 feet may consist of two panels. For two panel sections, the joint shall be located a consistent distance from the top of the Noise Barrier.

Transparent panels shall meet the requirements shown in Part 5, SP-18 and Part 6 – Directive Plans.

The Design-Builder shall conduct operations and take necessary precautions to prevent interference or damage to existing utilities during construction of noise barriers.

The Design-Builder shall take the proper precautions to avoid any man-made obstacles. In the event the edge of a noise barrier foundation is less than the required horizontal clearance to an existing or proposed utility, the Design-Builder may use a grade beam to cross the utilities such that the distance between the utility and edge of foundation meets the required clearance. Refer to RFP Part 4 – Utility Requirements for additional information.

26.2.3 Geometric Requirements

The begin and end stations for the noise barriers, as shown on the Directive Alignment Plans in Part 6 - RFP Plans, shall represent the minimum length of the walls. The elevations of the top of the noise barriers are shown in Part 6 – RFP Plans, Directive Drawings. The Design-Builder shall be responsible for confirming and refining wall heights based on the Design-Builder's final noise model. Wall heights shall not be shortened.

The top of the noise barrier shall be perpendicular to the posts. Top of noise barrier elevations shall be in accordance with the Directive Noise Barrier Elevations included in Part 6 – RFP Plans. The elevations on these drawings shall be considered minimum values.

Noise barriers with grade differences between the north and south ends shall be gradually stepped such that the top elevation of the noise barrier is constant for the greatest extent possible. The top of the noise barrier shall step up or down a maximum of 2'-0". The Design-Builder shall ensure that the noise barriers do not restrict the horizontal stopping sign distance for vehicular traffic. Design speeds utilized to determine the horizontal stopping sign distances may vary along the length of the noise barriers based on the existing and/or proposed mainline, service road, and/or ramp geometry and anticipated acceleration and/or deceleration speeds traversing the ramps.

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**PROJECT LABOR AGREEMENT
COVERING THE
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
I-81 VIADUCT PROJECT PHASE 1 CONTRACT 1
NYSDOT CONTRACT NUMBER D900054
(PIN 3501.90)**

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**PROJECT LABOR AGREEMENT
COVERING THE
I-81 VIADUCT PROJECT – PHASE 1, CONTRACT 1**

ARTICLE 1 – PREAMBLE

WHEREAS, New York State Department of Transportation ("NYSDOT"), desires to provide for the efficient, safe, quality, and timely completion of construction described herein relating to the I-81 Viaduct Project - Phase 1, Contract 1 ("The Project") in a manner designed to afford the lowest reasonable costs to the NYSDOT, and the public it represents, and the advancement of permissible statutory objectives;

WHEREAS, New York State Department of Transportation has engaged Seeler Engineering, P.C. ("Seeler") to undertake a study of whether the use of a Project Labor Agreement will best serve the NYSDOT's interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost saving advantages, and any local history of labor unrest; and

WHEREAS, Seeler's *Report Project Labor Agreement Benefits Analysis*, (the "study") dated March 10, 2022 ("*Report*"), concluded that use of a Project Labor Agreement would provide the NYSDOT with measurable economic benefits and would promote the NYSDOT's interest in obtaining the best work at the lowest prices as well as preventing favoritism, fraud and corruption; and

WHEREAS, the NYSDOT has carefully reviewed and considered Seeler's *Report* and has issued a "Project Labor Agreement Record Review and Determination I-81 Viaduct Project – Phase 1, Contract 1," dated March 16, 2022, which finds, among other things, that New York State's interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, preventing the impact of delay, avoiding labor unrest, and gaining measurable management flexibility and benefits are best met by requiring a Project Labor Agreement and, therefore, directs that a Project Labor Agreement be made part of the Project; and

WHEREAS, this Project Labor Agreement will foster the achievement of these goals, inter alia, by:

- (1) providing a mechanism for achieving the most cost efficient and effective means of construction, including direct and indirect labor and other cost savings;
- (2) avoiding the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes and promote labor harmony and peace on the jobsite for the duration of the covered work;
- (3) standardizing the terms and conditions governing the employment of labor on covered work;
- (4) permitting wide flexibility in work scheduling and shift hours and times;
- (5) providing comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction;

- (6) furthering public policy objectives as to improved employment opportunities in the construction industry for residents, minorities, women and the economically disadvantaged;
- (7) ensuring a reliable source of skilled and experienced labor;
- (8) expediting the construction process, enhancing the NYSDOT's ability to keep existing facilities functional, and otherwise minimizing public inconveniences relating to that construction; and

WHEREAS, the signatory Unions desire the stability, security and work opportunities afforded by a Project Labor Agreement; and

WHEREAS, the Parties desire to maximize safety conditions relating to the covered work;

NOW, THEREFORE, the Parties enter into this Agreement:

SECTION 1. PARTIES TO THE AGREEMENT

This is a Project Labor Agreement ("Agreement") to be entered into by and between the NYSDOT's Prime Contractor (PC) for this Project for certain construction work to be performed as part of the I-81 Viaduct Project - Phase 1, Contract 1 (as defined below), and the Central and Northern New York Building and Construction Trades Council, AFL-CIO, on behalf of itself and its affiliated local union members; and the signatory Local Unions on behalf of themselves and their members.

ARTICLE 2 – GENERAL CONDITIONS

SECTION 1. DEFINITIONS

Throughout this Agreement, the Union parties (the signatory Local Unions and Council) are referred to singularly and collectively as "Union(s)"; where specific reference is made to "Local Unions," that phrase is sometimes used; the term "Contractor(s)" shall include the NYSDOT's Prime Contractor and its subcontractors of whatever tier, engaged in on-site construction work within the scope of this Agreement as defined in Article 3; the NYSDOT's Prime Contractor on this Project, individually, is referred to as the "PC"; New York State Department of Transportation is referred to as the "NYSDOT" or "Owner"; the Central and Northern New York Building and Construction Trades Council, AFL-CIO is referred to as the "Central and Northern New York Council," and the work covered by this Agreement (as defined in Article 3) is referred to as the "Project" and/or "Project Work"

Wherever in this Agreement the PC is authorized or permitted to take any action, such action may be taken by either the PC or its designee. Whenever in this Agreement the NYSDOT is authorized or permitted to take any action, such action may be taken by either the NYSDOT or its designee.

SECTION 2. CONDITIONS FOR AGREEMENT TO BECOME EFFECTIVE

This Agreement shall not become effective unless each of the following conditions are met: (1) the Agreement is approved by the Building and Construction Trades Department, AFL-CIO and the NYS Building & Construction Trades Council; (2) signed by the Central and Northern New York Council and those Local Unions having jurisdiction over the Project Work and which are listed on the signature pages to this Agreement; (3) the Agreement is authorized by the NYSDOT; and (4) the Agreement is signed by the PC.

SECTION 3. ENTITIES BOUND & ADMINISTRATION OF AGREEMENT

This Agreement shall be binding on all signatory Unions, and their affiliates and all Contractors performing on-site Project Work as defined in Article 3. The PC shall include in any contract that it lets for performance during the term of this Agreement, a requirement that its subcontractors, of whatever tier, become bound by this Agreement with respect to subcontracted work performed within the scope of Article 3. Covered Contractors (including subcontractors of any tier) shall execute the Letter of Assent form attached to this Agreement as Schedule B. This Agreement shall be administered by the PC, for the benefit of NYSDOT, which is an intended third-party beneficiary of this Agreement.

SECTION 4. SUPREMACY CLAUSE

This Agreement, together with the local Collective Bargaining Agreements listed in the appendix hereto as Schedule A, represents the complete understanding of all parties and supersedes any national agreement, local agreement or other collective bargaining agreement of any type which would otherwise apply to Project Work, in whole or in part, except that in the event a Contractor is signatory to the NTL Article of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, or the National Agreement of the International Union of Elevator Constructors those agreements shall apply (except that notwithstanding the foregoing National Agreements, Articles 7, 9 and 10 of this Agreement shall still apply). Where a subject covered by the provisions, explicit or implicit, of this Agreement is also covered by a provision in Schedule A, the provisions of this Agreement shall prevail. It is further understood that no Contractor shall be required to sign any other labor agreement as a condition of performing Project Work. No practice, understanding or agreement between a Contractor and a Local Union which is not explicitly set forth in this Agreement shall be binding on Project Work unless endorsed in writing by the PC.

SECTION 5. LIABILITY

The liability of any Contractor and the liability of any Union under this Agreement shall be several and not joint. The PC shall not be liable for any violations of this Agreement by any other Contractor nor shall any Contractor be liable for any violations of this Agreement by any other Contractor; and the Central and Northern New York Council and Local Unions shall not be liable for any violations of this Agreement by any other Union. No grievance shall be brought directly against NYSDOT under this Agreement. Further, no arbitration decision or award may provide

retroactivity of more than twenty (20) days prior to the date of service of a written grievance as described herein.

SECTION 6. THE NYSDOT

The NYSDOT shall require in its bid specifications for the Prime Contractor for Project Work as defined in Article 3 that the successful bidder, and its subcontractors of whatever tier become bound by this Agreement. Neither the NYSDOT nor its designee shall be liable in any manner under this Agreement. It is understood that nothing in this Agreement shall be construed as limiting the discretion the NYSDOT otherwise has in determining which Prime Contractor shall be awarded the contract for Project Work. It is further understood that the NYSDOT has sole discretion at any time to terminate, delay or suspend, in whole or part, Project Work, or to undertake any of the work itself, without regard to this Agreement.

SECTION 7. AVAILABILITY AND APPLICABILITY TO ALL BIDDERS AND CONTRACTORS

The Unions agree that this Agreement will be made available to, and will fully apply to any successful bidder for Project Work, and its subcontractors, who become bound thereto, without regard to whether that successful bidder and/or its subcontractors perform work at other sites on either a union or non-union basis and without regard to whether employees of such successful bidder and/or its subcontractors are, or are not, members of any unions. This Agreement shall not apply to the work of any Contractor which is not Project Work, as defined in Article 3, Section 1.

ARTICLE 3 - SCOPE OF THE AGREEMENT

The Project Work covered by this Agreement shall be as defined and limited by the following sections of this Article.

SECTION 1. PROJECT WORK

Subject to section 3(c) of this Article, this Agreement shall apply to all on site work related to the I-81 Viaduct Project – Phase 1, Contract 1 Project Work as designated by the NYSDOT Contract Number D900054 (NYSDOT Project I.D. No. 3501.90) in its bid specifications (herein referenced as "Project Work"). The scope of Project Work may be subject to change as this work progresses or as circumstances change, and the scope of the PC's work is changed. Nevertheless, the parties understand that generally included within covered Project Work will be as follows.

- Improvements to the new section of I-81 (former I-481) between I-690 and New York State Thruway (I-90) including:
 - construction of a third northbound (auxiliary) lane between Kirkville Road (Interchange 5 northbound on-ramp) and I-90 (Interchange 6 northbound off-ramp).

- Reconstruction and widening of the new section of I-81 (former I-481) between Interchange 8 (Northern Boulevard) to Interchange 9 (existing I-81/I-481/NY Route 481 interchange) including:
 - construction of a southbound auxiliary lane, and
 - widening and rehabilitation of 3 existing bridges.
- Reconstruction of the existing I-81/I-481 northern interchange including:
 - demolition of the existing ramp that connects northbound I-481 to northbound I-81,
 - demolition of the existing ramp that connects southbound I-81 to southbound I-481,
 - widening of Business Local (BL) 81 (former I-81) northbound and southbound within the interchange area,
 - reconstruction of the existing loop ramp from BL 81 (former I-81) northbound to NY Route 481 northbound,
 - construction of a new 2 lane mainline roadway from existing I-81 southbound to new I-81 (former I-481) southbound,
 - construction of a new 2 lane mainline roadway from new I-81 (former I-481) northbound to I-81 northbound, and
 - construction of five new bridges and replacement of one bridge.
- Rehabilitation and widening of bridges (BIN 1072781, 1072791, 1072792), the replacement of a bridge (BIN 1031720) and the construction of 5 new bridges.

To the extent there is any conflict between the above general description and the NYSDOT's express designation of work (or the absence of any designation) in its bid specifications for a Prime Contractor, the NYSDOT's express designation (or absence of designation) shall be controlling and determinative of whether work is Project Work within the scope of this Agreement. Any work not included in the NYSDOT's PC bid specifications is not covered Project Work under this Agreement.

Specifically excluded from coverage under this Agreement is: (1) all work relating to bids solicited and/or work awarded prior to the execution of this Agreement by the parties and/or approval of it by the NYSDOT, (2) maintenance and repair work performed in the normal course of the NYSDOT's operations; (3) any work to be completed by the NYSDOT or any of its operating contractors and/or vendors; (4) off-site work not subject to coverage under Section 220 of the New York State Labor Law.

SECTION 2. TIME LIMITATIONS

This Agreement shall be limited to Project Work performed under the NYSDOT's PC contract (subject to exclusions noted herein) provided that this Agreement is approved by the

NYSDOT and by the Central and Northern New York Council and each Local Union and shall terminate when New York State Department of Transportation determines that the PC has completed all work of his contract and declares the work covered by this agreement is complete. This Agreement may be extended by mutual written agreement of the parties.

SECTION 3. EXCLUDED EMPLOYEES

Notwithstanding the provisions of Section 1, the following persons/entities (and the work performed by them) are not subject to the provisions of this Agreement, even though performing work on or in connection with the Project:

- a. Superintendents, supervisors (excluding general and forepersons specifically covered by a craft's Schedule A), engineers, inspectors and testers, quality control/ assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, technicians, non-manual employees, and all professional, engineering, administrative and management persons;
- b. The NYSDOT, any State or Federal agency, authority or entity or any municipality or other public employer, and any of their employees; the NYSDOT's designee and its employees; and any operations contractor, and its employees, employed by the NYSDOT,
- c. Entities (and their employees) engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of Project components, materials, equipment or machinery or involved in deliveries to and from site of Project Work including granular materials, concrete and/or ready-mix, asphaltic materials, soils and spoils (dedicated off-site work to which § 220 of New York's Labor Law applies is not excluded from coverage);
- d. Equipment suppliers (and their employees) performing and/or assisting in on-site equipment installation (where required by the supplier or as needed for warranty coverage) and on-site equipment warranty work, including but not limited to security and fire alarm systems suppliers, audio/visual equipment suppliers, ticketing systems equipment suppliers, and vendor related food service equipment suppliers;
- e. Entities (and their employees) engaged in geophysical testing;
- f. Entities (and their employees) engaged in laboratory, specialty testing, inspections, or surveying pursuant to a professional services agreement between the NYSDOT, the PC, or any of the NYSDOT's other professional consultants, and such laboratory, testing, inspection or surveying firm.
- g. Individuals engaged in on-site surveying as direct hires of a signatory Contractor, rather than pursuant to a professional services contract with the NYSDOT, the PC or any of the NYSDOT's other professional consultants, are covered by this Agreement;

- h. Third parties (and their employees) engaged in ancillary Project Work performed by third parties such as electric utilities, gas utilities, water, telephone companies, and railroads;

SECTION 4. NON-APPLICATION TO CERTAIN ENTITIES

This Agreement shall not apply to the parents, affiliates, subsidiaries, or other joint or sole ventures of any Contractor which do not perform Project Work. It is agreed, for the purposes of this Agreement only, that this Agreement does not have the effect of creating any joint employment, single employer or alter ego status among the NYSDOT or its designee, the PC and/or any other Contractor. The Agreement shall not apply to the NYSDOT or its designee or any state or federal agency, authority, or other municipal or public entity and nothing contained herein shall be construed to prohibit or restrict the NYSDOT or their employees or any NYSDOT, or state or federal authority, agency or entity and its employees or Contractors from performing on or off-site work related to the Project. As the contracts which comprise Project Work are completed and accepted by the NYSDOT and/or its designee, the Agreement shall not have further force or effect on such items or areas except where inspections, additions, repairs, modifications, check-out and/or warranty work are assigned in writing (copy to Local Union involved) by the PC for explicit performance under the terms of this Agreement.

ARTICLE 4 - UNION RECOGNITION AND EMPLOYMENT

SECTION 1. PRE-HIRE RECOGNITION

The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees who are performing Project Work within the scope of this Agreement as defined in Article 3. With respect to craft employees performing work which falls within the jurisdiction of a non-signatory craft, the Council shall be the sole and exclusive bargaining representative for those employees (and throughout this Agreement references to "Local Union" shall include the Council acting in that capacity).

SECTION 2. UNION REFERRAL

The Contractors agree to hire craft employees for Project Work covered by this Agreement through the job referral systems and hiring halls (where the referrals meet the qualifications set forth in items 1, 2 and 4 of subparagraph B) established in the applicable Local Unions' area collective bargaining agreements (listed in Schedule A to this Agreement). Notwithstanding this, the Contractors shall have sole right to determine the competency of all referrals; the number of employees required; the selection of employees to be laid-off (except as provided in Article 5, Section 3); and the sole right to reject any applicant referred by a Local Union, subject to any required show-up allowance. In the event that a Local Union is unable to fill any request for qualified employees within a 48-hour period after such requisition is made by the Contractor (Saturdays, Sundays and holidays excepted), the Contractor may employ qualified applicants from any other available source. In the event that the Local Union does not have a job referral system, the Contractor shall give the Local Union first preference to refer applicants, subject to the other

provisions of this Article. The Contractor shall notify the Local Union of Project craft employees hired within its jurisdiction from any source other than referral by the Union.

A Contractor may request by name, and the Local must honor, referral of persons who have applied to the Local for Project Work and who meet the following qualifications:

- (1) possess any license required by NYS law for the Project Work to be performed;
- (2) have worked a total of at least 1000 hours in the Construction craft during the prior 3 years;
- (3) were on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award;
- (4) have the ability to safely perform the basic functions of the applicable trade.

No more than 25 per centum of the employees covered by this Agreement, per Contractor by craft, shall be hired through the special provisions above (any fraction shall be rounded to the next highest whole number). Employees hired under ARTICLE 4 SECTION 5. INCENTIVE BASED HIRING PREFERENCES shall not be subject to qualifications requirements (2) and (3) above. Craft forepersons and/or general forepersons may be included in this 25 percent. If requested by the appropriate Union, a Contractor utilizing this provision for by-name referrals will furnish the Union with a written certification that the individuals requested for referral meet the requirements of (1) - (4) above.

It is understood that the first three employees per Contractor by craft shall be obtained through the Local Unions' job referral system and hiring halls; the 4th employee may be requested under the special provisions set forth above; and so on.

C. Notwithstanding the foregoing, a Contractor (including a subcontractor of any tier) who employs craft labor to perform work which falls within the craft jurisdiction of a non-signatory craft may obtain its workforce from any qualified source, including completely from its pre-existing workforce. Where appropriate, that Contractor will consider qualified participants in NYSDOT approved training programs for work opportunities.

SECTION 3. NON-DISCRIMINATION IN REFERRALS

The Local Unions represent that their hiring halls and referral systems will be operated in a non-discriminatory manner and in full compliance with all applicable federal, state and local laws and regulations which require equal employment opportunities. Referrals shall not be affected in any way by the rules, regulations, bylaws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject to such other conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system or hiring hall because of the applicant's union membership, or lack thereof.

SECTION 4. MINORITY/ FEMALE REFERRALS

The Unions recognize and acknowledge that Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to acknowledge that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

SECTION 5. INCENTIVE BASED HIRING PREFERENCES

The Project will target employment of residents located in specific zip codes within the City of Syracuse and Onondaga County, as well as residents of the Onondaga Nation Reserve where median incomes are disproportionately low and unemployment levels are considerably higher than that of the Region. Two incentive tiers will be utilized.

Tier 1 workers shall be workers from the Onondaga Nation territory or from the zip codes 13202, 13203, 13204, 13205, 13207, 13208, 13210, 13224 or 13290, or from zip codes 13206 or 13214 that reside within the City of Syracuse. Residents of 13206 and 13214 will need to confirm they live in the City of Syracuse. Tier 2 workers shall be Tier 1 qualifications who will also face one of the following barriers: being a custodial single parent, receiving federally funded housing assistance, receiving HEAP, SNAP, or Medicaid, lacking a GED or high school diploma, having a criminal conviction, or emancipated from the foster care system.

Local hires need to reside in the target area for at least 6 months before being hired.

The Unions recognize that the maximum incentive for the project is 15% of the overall project hours. If a Local Union is unable to fill any request for Tier 1 or Tier 2 employees within a 48-hour period after such requisition is made by the Contractor (Saturdays, Sundays and holidays excepted) the Contractor may employ qualified applicants from any other available source.

SECTION 6. CROSS AND QUALIFIED REFERRALS

The Local Unions shall not knowingly refer to a Contractor an employee then employed by another Contractor working under this Agreement. The Local Unions will exert their utmost efforts to recruit sufficient numbers of skilled and qualified crafts employees to fulfill the requirements of the Contractor.

Consistent with law and its rules, the Unions will make every reasonable effort to provide a preference in referrals to Contractors for qualified journeymen and apprentices who reside within the geographic boundaries of the NYSDOT.

SECTION 7. UNION DUES

No employee shall be discriminated against because of the employee's union membership or lack thereof. Each Contractor shall deduct from each employee's wages all uniform dues and working assessments the employee has voluntarily authorized in writing as set forth in the employee's applicable Schedule A local agreement and remit the same to the applicable local Union.

Each Contractor shall be responsible for and guarantee the payment of all remittance to the appropriate Local Union of the applicable union dues or agency shop fee payable by its employees working on the Project. The Local Unions and/or the Central and Northern New York Council shall notify the Contractor, the PC, and NYSDOT's project manager within 48 hours whenever a Contractor or Subcontractor, including the PC, fails to make a required payment and such delinquency remains outstanding after 30 days. Notification must be in writing and may be by email. If written notice of such a delinquency is received by the Contractor within that 48-hour period, the Contractor shall notify the PC and NYSDOT's project manager immediately, but, in any case, within 24 hours. If NYSDOT or the PC receives notice of a delinquency, NYSDOT may and the PC shall withhold from any payment, based upon the work of the delinquent Contractor and/or Subcontractor, the amount of that delinquency, up to the total amount due until any dispute regarding the delinquency has been resolved. The PC shall have no other obligation with respect to contributions owed by any Contractor (or its Subcontractor); but the PC shall continue to be obligated with respect to contributions based on work done by the PC. If notice of a delinquency is not received by NYSDOT within the required time periods, NYSDOT shall have no basis upon which to withhold, with respect to that delinquency, any part of a payment which is otherwise due.

SECTION 8. CRAFT FOREPERSONS AND GENERAL FOREPERSONS

The selection of craft forepersons and/or general forepersons and the number of forepersons required shall be solely the responsibility of the Contractor. All forepersons shall take orders exclusively from the designated Contractor representatives. All forepersons shall be designated as working forepersons at the request of the Contractor.

ARTICLE 5 - UNION REPRESENTATION

SECTION 1. LOCAL UNION REPRESENTATIVE

Each Local Union signatory to this Agreement shall be entitled to designate in writing (copy to Contractor involved, the PC and the NYSDOT or its designee) two representatives, and/or the Business Manager, who shall be afforded reasonable access to Project Work.

SECTION 2. STEWARDS

Each Local Union shall have the right to designate one working journey person as a Steward and one alternate for each Contractor and shall notify the Contractor and PC of the identity of the designated Steward (and alternate) prior to the assumption of such duties. Stewards shall not exercise supervisory functions and will receive the regular rate of pay for their craft classifications. There will be no non-working Stewards.

In addition to their work as an employee, the Steward shall have the right to receive complaints or grievances and to discuss and assist in their adjustment with the Contractor's appropriate supervisor. Each Steward shall be concerned with the employees of the Steward's Contractor and, if applicable, subcontractors of that Contractor, but not with the employees of any other Contractor. The Contractor will not discriminate against the Steward in the proper performance of Union duties.

The Stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.

SECTION 3. LAYOFF OF A STEWARD

Contractors agree to notify the appropriate Union 24 hours prior to the layoff of a Steward, except in cases of discipline or discharge for just cause. If a Steward is protected against layoff by a Schedule A provision, such provision shall be recognized to the extent the Steward possesses the necessary qualifications to perform the work required. In any case in which a Steward is discharged or disciplined for just cause, the Local Union involved shall be notified immediately by the Contractor.

ARTICLE 6 - MANAGEMENT'S RIGHTS

SECTION 1. RESERVATION OF RIGHTS

Except as expressly limited by a specific provision of this Agreement, Contractors retain full and exclusive authority for the management of their operations including, but not limited to: the right to direct the work force, including determination as to the number to be hired and the qualifications therefore; the promotion, transfer, layoff of its employees; or the discipline or discharge for just cause of its employees; the assignment and schedule of work; the promulgation of reasonable work rules; and, the requirement, timing and number of employees to be utilized for overtime work. No rules, customs, or practices which limit or restrict productivity or efficiency of the individual (as determined by the Contractor or PC) and/or joint working efforts with other employees shall be permitted or observed.

SECTION 2. MATERIALS. METHODS & EQUIPMENT

There shall be no limitation or restriction under this Agreement upon the Contractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-

finished, or pre-assembled materials, tools, or other labor-saving devices. Contractors may, without restriction under this Agreement, install or use materials, supplies or equipment regardless of their source. Except as provided in Article 3, Section 3, the on-site installation or application of such items shall be performed by the craft having jurisdiction over this work; provided, however, even then it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-off or testing of specialized or unusual equipment or facilities as designated by the PC or Contractor. There shall be no restrictions as to work which is performed off-site except as may be imposed by law.

ARTICLE 7 - WORK STOPPAGES AND LOCKOUTS

SECTION 1. NO STRIKES-NO LOCK OUT

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, hand billing, bannering, demonstrations or other disruptive activity at or in proximity to the Project Site or any other site where Project Work is performed for any reason by any Union or employee against the NYSDOT or its designee, PC or any Contractor or other employer while performing any work at that site. There shall be no other Union or concerted or employee activity related to Project Work which disrupts or interferes with the operation of any NYSDOT facility or function wherever located. Failure of any Union or employee to cross any picket line or banner line established by any union, signatory or non-signatory to this Agreement, or the picket, banner or demonstration line of any other organization, at or in proximity to the Project Site or any other site where Project Work is performed or could be adversely affected is a violation of this Article. There shall be no lockout in connection with Project Work by any signatory Contractor. Contractors and Unions shall take all steps necessary to ensure compliance with this Section 1 and to ensure uninterrupted construction, the free flow of traffic in, out and around the Project Site and/or any other Project Work site, and unimpeded operation of the NYSDOT facilities and functions for the duration of this Agreement.

SECTION 2. DISCHARGE FOR VIOLATION

A Contractor may discharge any employee violating Section 1, above, and any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 working days.

SECTION 3. NOTIFICATION

If a Contractor contends that any Union has violated this Article, it will notify the Central and Northern New York Council, with copies of the notification to the Local Union, the Owner or its designee. The Central and Northern New York Council shall instruct, order and otherwise use their best efforts to cause the employees, and/or the Local Unions to immediately cease and desist from any violation of this Article. If the Central and Northern New York Council complies with these obligations, it shall not be liable for the unauthorized acts of a Local Union or its members.

SECTION 4. EXPEDITED ARBITRATION

Any Contractor or Union alleging a violation of Section 1 of this Article may utilize the expedited procedure set forth below (in lieu of, or in addition to, any actions at law or equity) that may be brought.

A party invoking this procedure shall notify Robert Rabin, Jeffery Selchick, or Thomas Rinaldo who shall alternate as Arbitrator under this expedited arbitration procedure. If the Arbitrator next on the list is not available to hear the matter within 48 hours of notice, the next Arbitrator on the list shall be called. If for any reason none of the foregoing are available, the PC and Council shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the American Arbitration Association to provide them with a list of arbitrators from which the Arbitrator shall be selected. Copies of such notification will be simultaneously sent to the alleged violator and, if a Local Union is alleged to be in violation, its International affiliate, the Central and Northern New York Council, and the PC and the NYSDOT or its designee.

The Arbitrator shall thereupon, after notice as to time and place to the Contractor, the Local Union involved, the Central and Northern New York Council, the PC, and the NYSDOT or its designee, hold a hearing within 48 hours of receipt (excluding Sundays and holidays) of the notice invoking the procedure if it is contended that the violation still exists. The hearing will not, however, be scheduled for less than 24 hours (excluding Sundays and holidays) after the notice required by Section 3, above. Any hearing shall be held in Syracuse, New York unless the parties and the NYSDOT or its designee mutually agree otherwise.

All notices pursuant to this Article may be by telephone, telegraph, hand delivery, or email, confirmed by overnight delivery, to the Arbitrator, Contractor, PC, NYSDOT or its designee, Central and Northern New York Council and Union involved. The hearing may be held on any day including Saturdays or Sundays. The hearing shall be completed in one session, which shall not exceed 8 hours duration (no more than 4 hours being allowed to either side to present their case, and conduct their cross examination) unless otherwise agreed. A failure of any Union or Contractor to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator.

The sole issue at the hearing shall be whether a violation of Section 1, above, occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Award restraining such violation and serve copies on the Contractor, PC, NYSDOT or its designee, Central and Northern New York Council and Union involved. The Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages, which issue is reserved solely for court proceedings, if any. The Award shall be issued in writing within 3 hours after the close of the hearing and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days, but its issuance shall not delay compliance with, or enforcement of, the Award.

An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the Award. Notice of the filing of such enforcement proceedings shall be given to the Union and Contractor involved and to the PC and NYSDOT or its designee. In any court proceeding to obtain a temporary or preliminary order enforcing the arbitrator's Award as issued under this expedited procedure, the involved Union and

Contractor waive their right to a hearing and agree that such proceedings may be ex parte, provided notice is given to opposing counsel. Such agreement does not waive any party's right to participate in a hearing for a final court order of enforcement or in any contempt proceeding.

Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the Contractors and Unions to whom they accrue.

The fees and expenses of the Arbitrator shall be equally divided between the involved Contractor and Union.

SECTION 5. ARBITRATION OF DISCHARGES FOR VIOLATION

Procedures contained in Article 9 shall not be applicable to any alleged violation of this Article, with the single exception that an employee discharged for violation of Section 1, above, may have recourse to the procedures of Article 9 to determine only if the employee did, in fact, violate the provisions of Section 1 of this Article; but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

ARTICLE 8 - LABOR MANAGEMENT COMMITTEE

SECTION 1. SUBJECTS

The Project Labor Management Committee will meet on a regular basis to: 1) promote harmonious relations among the Contractors and Unions; 2) enhance safety awareness, cost effectiveness and productivity of construction operations; 3) protect the public interest; 4) discuss matters relating to staffing and scheduling with safety and productivity as considerations; and 5) review Affirmative Action and equal employment opportunity matters pertaining to the Project Work. The PC shall take notes of all meetings and distribute them to the Committee.

SECTION 2. COMPOSITION

The Committee shall be comprised of three designees of the Central and Northern New York Council and three designees of the PC (at least one of which will come from the PC), and representatives of the Local Unions and Contractors involved in the issues being discussed. The Committee may elect its own chair. The Committee may conduct business through mutually agreed sub-committees.

ARTICLE 9 - GRIEVANCE & ARBITRATION PROCEDURE

SECTION 1. CLOSE COOPERATION

This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

SECTION 2. IMPORTANCE TO ALL PARTIES

The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

SECTION 3. PROCEDURE

Any question or dispute arising out of and during the term of this Project Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the PC (if it so chooses) shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the PC) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the Relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union(s) or any Contractor (including the PC) have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The International Union Representative and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The parties will use, on a rotating basis, Robert Rabin, Jeffery Selchick and Thomas Rinaldo. If for any reasons none of the foregoing are available, the PC and Council shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the American Arbitration Association to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of the American Arbitration

Association shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s). Any hearing will be held in Syracuse, New York unless the parties, including the NYSDOT or its designee, mutually agree otherwise.

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

(c) The PC, NYSDOT or its designee shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

SECTION 4. LIMITATION AS TO RETROACTIVITY

No arbitration decision or award may provide retroactivity of any kind prior to the date of service of the grievance under Step 1 or 28 days prior to the date of service of the written grievance on the PC and the involved Contractor or Local Union under Step 2, whichever period is shorter.

ARTICLE 10 - JURISDICTIONAL DISPUTES

SECTION 1. ASSIGNMENT

The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the National Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "National Plan") or any successor Plan approved by the Building & Construction Trades Department, AFL-CIO.

SECTION 2. PROCEDURE FOR SETTLEMENT OF DISPUTES

All jurisdictional disputes involving Project Work between or among parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement with respect to Project Work.

SECTION 3. NO INTERFERENCE OF WORK

All Jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

SECTION 4. PRE-JOB CONFERENCE

Each Contractor or subcontractor of any tier will conduct a pre-job conference with the Central and Northern New York Council prior to commencing work. The PC and the NYSDOT or its designee will be advised in advance of all such conferences and may participate if they wish.

In conjunction with the pre-job conference, each Contractor shall complete the attached Pre-Job Questionnaire form (Schedule C) to identify all Subcontractors and indicating what trades will be used to perform the Project work "Proposed Trade Assignments". This form shall be submitted to the Central and Northern New York Council at least fourteen (14) days in advance of the commencement of work. If any Local Union(s) objects or disagrees to the Proposed Trade Assignment of either the Prime Contractor, Contractor or Subcontractor, the Local Union will state its objection and there shall be a good faith discussion among the Contractor or Subcontractor and the objecting Local Union and other affected Unions to resolve objections to the trade assignment. If no resolution is reached, any involved Local Union may submit their position in writing together with support documentation within seven (7) calendar days to the Prime Contractor, Contractor or Subcontractor with a copy to all affected Local Unions. The Prime Contractor, Contractor or Subcontractor will review all submitted supporting documentation regarding the Proposed Trade Assignments and will submit to the Contractor, the Central and Northern New York Council, and all affected Local Unions a "Final Trade Assignment" letter within fourteen (14) days calendar days of the pre-job meeting at which the Proposed Trade Assignments were made. Any unresolved disputes concerning trade assignments shall be handled in accordance with Section 10.1, 10.2, and 10.3 of this Article in accordance with the present Plan established by the Building and Construction Trades Department.

ARTICLE 11 - WAGES AND BENEFITS

SECTION 1. CLASSIFICATION AND BASE HOURLY RATE

Subject to the provisions of this Agreement, all employees covered by this Agreement shall be classified in accordance with the work performed and paid the base, straight time hourly wage rates applicable for those classifications as required by the applicable New York State Labor Law Section 220 prevailing wage determination.

SECTION 2. EMPLOYEE BENEFITS/SUPPLEMENTS

A. Except as may be modified by this Agreement (to the extent permitted by law), the Contractors agree to pay employee benefits/supplements on behalf of all of their employees covered by this Agreement in the amounts required by the applicable Section 220 schedule in effect.

Except as provided below and in 2B, the Contractors agree that such payments shall be made to those established jointly trustee employee benefit funds designated in Schedule A, and in the amounts so designated, to the extent such amounts are required by Section 220 and payment to a Schedule A fund satisfies that obligation. Bona fide jointly trustee fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if they similarly fall within Section 220. Contractors shall not be required to contribute to non-Section 220 benefits, trusts or plans or beyond Section 220 required amounts.

B. Notwithstanding Article 11 Section 2A, Contractors who designate employees pursuant to Article 4 Section 2B, may satisfy the above benefit obligation with respect to those employees by: (i) providing those employees with coverage under their own bona fide private benefit plans, provided such plans satisfy the requirements of the Internal Revenue Code, (ii) by electing to pay into the applicable jointly held trustee funds designated on Schedule A on their behalf, or (iii) by including the full amount of such benefit in the employee's wages. When the benefit payments are paid into private plans, the payments to be made on behalf of those employees must equal the total supplement amount set forth at the Wage and Benefit sheet referred in Section 1 of this Article and must be consistent with the requirements of Section 220, and any shortfall must be included in the employee's wages.

The option for a private plan equivalent supplement or payment of benefits in employee wages shall not apply to contributions into Joint Apprentice Training Committee (JATC) or similar apprentice funds designated on Schedule A if the Contractor does not have an apprentice training program approved by the Department of Labor. Upon request by the Council, any contractor providing coverage to Article 4, Section 2B employees under private benefit plans will provide the Council with documentation of benefit payments made to individual employees during the term of their employment on the Project.

C. Contractors who exercise the option under Article 11 Section 2B of this Article to pay into their own private benefit plans or pay cash in the envelope rather than the applicable jointly trusted funds designated in Schedule A shall be responsible for and guarantee employee benefit/supplement payments and shall indemnify and hold harmless the jointly trusted funds designated in Schedule A against any and all benefit/supplement claims by its employees. Employees who exercise this option shall sign a waiver included as Schedule E

D. Contractors who contribute to jointly trusted funds under this Section agree to be bound by the written terms of the legally-established jointly trusted Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to Project Work and only for those employees to whom this Agreement requires such benefit payments. Notwithstanding the foregoing, a Contractor's liability shall be at all times limited to the amount of contributions required to be made to the Trust Funds.

E. Each Contractor shall be responsible for and guarantee the payment of all required fringe benefits for Project Work. The Local Unions and/or the Council shall notify the PC, the NYSDOT and the Contractor or Subcontractor within 48 hours whenever a Contractor or Subcontractor fails to make a required benefit payment and such delinquency remains outstanding after 30 days. Notification must be in writing and may be by email. If the PC and NYSDOT receives notice of a delinquency by Contractor or Subcontractor, the NYSDOT may place the funds equivalent to the delinquency into escrow or otherwise withheld from any funds due the Contractor or Subcontractor, up to the total amount due, until the delinquency is resolved. The NYSDOT shall have no other obligation with respect to contributions owed by any Contractor (or its Subcontractor), but the Contractor shall continue to be obligated with respect to contributions based on work done by the Contractor. If notice of a delinquency is not received by the NYSDOT

or the PC within the required time periods, the NYSDOT shall have no basis upon which to withhold, with respect to that delinquency, any part of a payment which is otherwise due.

Any payment otherwise required under any CBA with the exception of those expressly required under Section 220 separate and apart from wages and fringe benefits shall not be required.

ARTICLE 12 - HOURS OF WORK, PREMIUM PAYMENTS, SHIFTS AND HOLIDAYS

SECTION 1. WORK WEEK AND WORK DAY

A. The standard work week shall consist of 40 hours of work at straight time rates per one of the following schedules:

(1) Five-Day Work Week: Monday - Friday; 5 days, 8 hours plus 1/2 hour unpaid lunch period each day.

(2) Four-Day Work Week: Monday - Thursday, 4 days, 10 hours plus 1/2 hour unpaid lunch period each day.

B. The Day Shift shall normally commence between the hours of 6:00 am. and 9:00 a.m., although there may be times when NYSDOT or its designee may require the day shift to start as early as 5:00 a.m. Starting and quitting times shall occur at the site as designated by the Contractor.

C. Scheduling - The Contractor shall have the option of scheduling either a five-day or four-day work week and work day hours consistent with Project Work requirements and scheduling. When conditions beyond the control of the Contractor, such as weather, power failure, fire or natural disaster, prevent the performance of Project Work on a regularly scheduled work day, the Contractor may schedule Friday (where on 4, 10's) or Saturday (where on 5, 8's) during that calendar week in which a workday was lost, at straight time pay, providing the employees involved have not otherwise worked more than 40 hours during that work week. In the event the employees involved have worked more than 40 hours during that work week they will receive time and one-half pay for the hours in excess of 40. An individual employee shall not be penalized for inability to work a Friday or Saturday make-up day. It shall be the employee's responsibility to notify the Employer and Union involved that they will not be working that day.

D. Notice - Contractors shall provide not less than 5 working days prior notice to the Local Union involved as to the work week and work hour schedules (including any changes in the work schedule) to be worked or such lesser notice as may be mutually agreed upon.

SECTION 2. OVERTIME/PREMIUM PAY

Unless provided differently in this Agreement, overtime and/or premium pay for hours outside of the standard work week and work day, described in Section 1 above, shall be paid in accordance with the applicable Schedule A (or where there is no applicable Schedule A then as

required by the wage and supplement schedule under Labor Law Section 220), except that overtime/premium pay shall not exceed 1 and 1/2 times the base rate for any hours worked Monday through Saturday. There will be no restriction upon the Contractor's scheduling of overtime or the non-discriminatory designation of employees who shall be worked. "There shall be no pyramiding of overtime/premium pay under any circumstances. The Contractor shall have the right to schedule work so as to minimize overtime. Holiday pay, if any, will be paid in accordance with Article 12, Section 4 below.

SECTION 3. SHIFTS

A. Flexible Schedules-Scheduling of shift work shall remain flexible in order to meet Project schedules and existing conditions. It is not necessary to work a day shift in order to schedule a second or third shift. Any combination of shifts may be used (including only a second shift or only a third shift.) Shifts must have prior approval of the NYSDOT or its designee and must be scheduled with not less than five work days notice to the Local Union.

B. Second/or Third Shifts - The second shift will normally start between 4:30 p.m. and 7:30 p.m. and the third shift will normally start after 7:30 p.m. and in each case shall be paid the lesser of a shift differential of 5% and 10%, respectively, or the differential required by Section 220. There shall be no reduction in hours worked on a second and/or third shift, except that when 3 shifts are working together, the length of one or more shifts can be reduced to accommodate a 24 hour day and only actual hours worked will be paid.

C. Flexible Starting Times - The foregoing shift starting times can be adjusted by the Contractor, with the NYSDOT or its designee's approval, as necessary to fulfill Project requirements, subject to the notice requirements of paragraph A.

Four Tens - When working a four-day work week, the standard work day shall consist of 10 hours work for 10 hours of pay at the straight time rate exclusive of an unpaid 1/2 hour meal period and regardless of the starting time. Should a work assignment extend for more than ten hours, hours 11, 12, and 13 shall be paid at 1 and 1/2 time base. Hour 14 and thereafter shall be paid at 2 times base.

Night Shift – There shall be no wage rate premium for Night Shift work.

SECTION 4. HOLIDAYS

A. Schedule- There shall be 8 recognized holidays on the Project:

New Year's Day
Memorial Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas Day
Martin Luther King Day

Juneteenth

All said holidays shall be observed on the dates designated by New York State Law. In the absence of such designation, they shall be observed on the calendar date except those holidays which occur on Saturday shall be observed on the preceding Friday and those which occur on Sunday shall be observed on the following Monday.

B. Payment – There shall be no payment for holidays if not worked. Any premium pay for work performed on such a recognized holiday shall be in accordance with the applicable Schedule A.

C. Exclusivity - No holidays other than those listed in Section 4-A above shall be recognized or observed.

SECTION 5. REPORTING PAY

A. Employees who report to the work location pursuant to a regular schedule and who are not provided with work or whose work is terminated early by a Contractor, for whatever reason, shall receive the greater of an allowance for travel costs equal to one hour's pay or pay for any hours actually worked, but not both. (Such payment is in lieu of any reporting or similar pay provided for in an applicable Schedule A.) The allowance for travel costs is not to be considered as wages nor is it to be included in the calculation of any benefits.

B. When an employee who has completed their scheduled shift and left the Project site is "called out" to perform special work of a casual, incidental or irregular nature, the employee shall receive pay for actual hours worked with a minimum guarantee, as may be required by the applicable Schedule A, at the employee's straight time rate, unless overtime rates otherwise apply.

C. When an employee leaves the job or work location of their own volition or is discharged for cause or is not working as a result of the Contractor's invocation of Section 7 below, they shall be paid only for the actual time worked.

D. Except as specifically set forth in this Article there shall be no premiums, bonuses, hazardous duty (unless required under Section 220), high time or other special payments of any kind.

E. There shall be no pay for time not actually worked except as specifically set forth in this Article.

SECTION 6. PAYMENT OF WAGES

A. Payday - Payment shall be made by check, drawn on a New York bank with branches located within commuting distance of the job site. Paychecks shall be issued by the Contractor at the job site by 10 a.m, on Thursdays. A Contractor who fails to make payments on the designated day shall be subject to a late fee of \$50.00/day per employee until payment is issued. In the event

that the following Friday is a bank holiday, paychecks shall be issued on Wednesday of that week. Not more than 3 days' wages shall be held back in any pay period. Paycheck stubs shall contain the name and business address of the Contractor, together with an itemization of deductions from gross wages and the prevailing rate of wage for the employee's particular job classification, as required by Section 220 of the New York State Labor Law.

B. Termination- Employees who are laid off or discharged for cause shall be paid in full for that which is due them at the time of termination. The Contractor shall also provide the employee with a written statement setting forth the date of lay off or discharge.

SECTION 7. EMERGENCY WORK SUSPENSION

A Contractor may, if considered necessary for the protection of life, property, and/or safety of employees or others, suspend all or a portion of Project Work. In such instances, employees will be paid for actual time worked; provided, however, that when a Contractor requests that employees remain at the job site available for work, employees will be paid for "stand-by" time at their hourly rate of pay.

SECTION 8. INJURY/DISABILITY

An employee who, after commencing work, suffers a work-related injury or disability while performing work duties, shall receive no less than 8 hours wages for that day. Further, the employee shall be rehired at such time as able to return to duties provided there is still Project Work available for which the employee is qualified and able to perform.

SECTION 9. TIME KEEPING

A Contractor may utilize brassing or other systems to check employees in and out. Each employee must check in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

SECTION 10. MEAL PERIOD

A Contractor shall schedule an unpaid period of not more than 1/2 hour duration at the work location between the 3rd and 5th hour of the scheduled shift. A Contractor may, for efficiency of operation, establish a schedule which coordinates the meal periods of two or more crafts. If an employee is required to work through the meal period, the employee shall be compensated in a manner established in the applicable Schedule A.

SECTION 11. BREAK PERIODS

There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual coffee containers will be permitted at the employee's work location.

ARTICLE 13 – APPRENTICES

SECTION 1. RATIOS

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry and to provide craft entry opportunities for minorities, women and economically disadvantaged non-minority males, Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. Contractors may utilize apprentices registered in a NYS certified program (and such other appropriate classifications as are contained in the applicable Schedule A) in a ratio not less than 33% of the work force by craft (without regard to whether a lesser ratio is set forth in Schedule A), unless the applicable Schedule A provides for a higher percentage, in which case that will apply. Apprentices and such other classifications as are appropriate shall be employed in a manner consistent with the provisions of the appropriate Schedule A. The Local Unions shall maintain sufficient apprenticeship slots to meet Project Work needs.

SECTION 2. DEPARTMENT OF LABOR

To assist the Contractors in attaining a maximum effort in connection with Project Work, the Unions agree to work in close cooperation with, and accept monitoring by, the New York State Department of Labor to ensure that individuals qualified under ARTICLE 4 SECTION 5. INCENTIVE BASED HIRING PREFERENCES are afforded every opportunity to participate in apprenticeship programs which result in the placement of apprentices on this Project. To further ensure that this Contractor effort is attained, up to 50% of the apprentices placed on this Project may be first year, apprentices hired through the INCENTIVE BASED HIRING PREFERENCES Section of this agreement. The Local Unions will cooperate with Contractor requests for such referrals to meet this Contractor effort.

ARTICLE 14 - SUBCONTRACTING

No Contractor or subcontractor will subcontract any Project Work except to a person, firm or corporation who is or agrees to become party to this Agreement. Any Contractor or subcontractor working on the Project shall, as a condition to working on said Project, sign a Letter of Assent and perform all Project Work under the terms of this Agreement, including Article 4 which requires that all workers used for Project Work be represented by the Local Unions signatory to this agreement. Project Work may be contracted/subcontracted to any Contractor or subcontractor who is or agrees to become party to this Agreement.

ARTICLE 15 - DIVERSITY

The Unions and Contractors recognize the importance of fostering participation and growth of Disadvantaged Business Enterprises (DBEs) and agree that they will work cooperatively with the NYSDOT in support of its diversity efforts and its goals for DBEs. This cooperation includes working with NYSDOT to participate in informational recruitment seminars and other such

activities as scheduled by NYSDOT and the PC as well as active individual Contractor outreach to encourage participation.

ARTICLE 16 - HELMETS TO HARDHATS

SECTION 1.

The Contractors and the Unions also recognize a desire to facilitate the entry into the Building and Construction Trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve its a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

SECTION 2.

The Contractors and the Unions agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 17 - SAFETY PROTECTION OF PERSON AND PROPERTY

SECTION 1. SAFETY AND SECURITY REQUIREMENTS

Each Contractor will ensure that applicable OSHA, NYSDOT, and PC mandated Project Safety Program requirements, are at all times maintained and the employees and Unions agree to cooperate fully with these efforts. Employees must perform their work at all times in a safe manner, subject to required security protocols, and protect themselves and the property of the Contractor and NYSDOT from injury or harm. Failure to do so may be grounds for discipline, including discharge.

SECTION 2. CONTRACTOR RULES

Employees covered by this Agreement shall at all times also be bound by the reasonable safety, security, and visitor rules as established by the PC, Contractors, and/or NYSDOT. Such rules will be published and posted in conspicuous places throughout the work site.

SECTION 3. INSPECTIONS

The Owner or its designee, Contractors and PC retain the right to inspect incoming shipments of equipment, apparatus, machinery and construction materials of every kind.

ARTICLE 18 - NO DISCRIMINATION

SECTION 1. COOPERATIVE EFFORTS

The Contractors and Unions agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, marital status, age, union or non-union status, or any other status protected by law, in any manner prohibited by law or regulation. It is recognized that special procedures may be established by mutual agreement among Contractors and Local Unions and the New York State Department of Labor for the training and employment of persons who have not previously qualified to be employed on construction projects of the type covered by this Agreement. The parties to this Agreement will assist in such programs and agree to use their best efforts to ensure that the goals for female and minority employment are met on this Project.

SECTION 2. LANGUAGE OF AGREEMENT

The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

ARTICLE 19 - GENERAL TERMS

SECTION 1. PROJECT RULES

The PC and/or the Contractors shall establish from time to time such reasonable work rules (which may include pre-hire and post-hire drug testing rules) as are appropriate for the good order of the Project Work. These rules will be explained at the pre-job conference (if then existing) and posted at the site and may be amended thereafter as necessary. Failure of an employee to observe these rules and regulations shall be grounds for discipline, including discharge. The fact that no order was posted prohibiting a certain type of misconduct shall not be a defense to an employee disciplined or discharged for such misconduct when the action taken is for cause.

SECTION 2. TOOLS OF THE TRADE

The welding/cutting torch and chain fall are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any of the work of the trade. There shall be no restrictions on the emergency use of any tools or equipment by any qualified employee or on the use of any tools or equipment for the performance of work within the employee's jurisdiction.

SECTION 3. SUPERVISION

Employees shall work under the supervision of the craft foreperson or general foreperson.

SECTION 4. TRAVEL ALLOWANCES

There shall be no payments for travel expenses, travel time, parking, subsistence allowance or other such reimbursements or special pay except as expressly set forth in this Agreement.

SECTION 5. FULL WORK DAY

Employees shall be at their work area at the starting time established by the Contractor. The signatories reaffirm their policy of a fair day's work for a fair day's wage.

ARTICLE 20 - COOPERATION

To the extent permitted by law, the parties intend for the provisions of this Agreement to control in the event of a conflict between this Agreement and any provision of New York State Labor Law. Towards that end, the PC, Contractors and the Unions will cooperate in seeking any NYS Department of Labor approvals that may be required for implementation of any terms of this Agreement.

ARTICLE 21 - SAVINGS AND SEPARABILITY

SECTION 1. THIS AGREEMENT

In the event that the application of any provision of this Agreement is enjoined, on either on an interlocutory or permanent basis, or otherwise found in violation of law, the provision involved shall be rendered, temporarily or permanently, null and void. In such event, the remainder of the Agreement shall remain in full force and effect, to the extent allowed by law, for contracts or work already bid and/or awarded and still in construction provided the Contractor then voluntarily accepts the Agreement. The parties to this Agreement will enter into negotiations for a substitute provision in conformity with the law and the intent of the parties for contracts to be let in the future.

SECTION 2. THE BID SPECIFICATIONS

In the event that the NYSDOT's bid specifications, or any other action taken by the NYSDOT or the PC, requiring that a successful bidder or other recipient of Project Worker become signatory to this Agreement is enjoined, on either an interlocutory or permanent basis, or otherwise found in violation of law, then such specification or other action, and with it Article 2, Section 6, shall be rendered, temporarily or permanently, null and void. In such event, this Agreement shall remain in full force and effect to the extent allowed by law for contracts or work already bid and/or awarded and still in construction provided the Contractor then voluntarily accepts the Agreement. The parties will enter into negotiations as to modifications to the Agreement to reflect the court action taken and the intent of the parties for contracts to be let in the future.

SECTION 3. NON-LIABILITY

In the event of an occurrence referenced in Section 1 or Section 2 of this Article, neither the NYSDOT, the Owner's Representative, any Contractor, nor any signatory Union shall be liable under this Agreement or otherwise, directly or indirectly, for any action taken, or not taken, in order to comply with any court order, injunction or determination, Project bid specifications will be

issued in conformance with court orders then in effect and no retroactive payments or other retroactive action will be required if the original court determination is reversed. Contracts shall be awarded on the basis of the specification issued unless those specifications have been enjoined or otherwise ruled unlawful, in which case the award, if any, shall be based on the specification as modified to meet any applicable court order.

SECTION 4. NON-WAIVER

Nothing in this Article shall be construed as waiving the prohibitions of Article 7 as to bound Contractors and signatory Unions.

ARTICLE 22 - FUTURE CHANGES IN SCHEDULE A AREA CONTRACTS

SECTION 1. CHANGES TO AREA CONTRACTS

A. To the extent applicable to the Project Work, Schedule A to this Agreement shall continue in effect until the Contractor and/or Union parties to the Area Collective Bargaining Agreements which are the basis for Schedule A notify the PC in writing of the mutually agreed upon changes in provisions of such agreements which are applicable to the Project Work, and their effective dates. Such changes, including changes in wage and benefit/supplement rates, shall only be effective to the extent consistent with this Agreement.

B. It is agreed that any provisions negotiated into Schedule A will not apply to work on this Project if such provisions are less favorable to Project Work than those uniformly required of Contractors for construction work, other than Project Work, normally covered by those agreements; nor shall any provision be recognized or applied to Project Work if it may be construed to apply exclusively, or predominantly, to work covered by this Agreement.

C. Any disagreement between signatories to this Agreement over the incorporation into Schedule A of provisions agreed upon in the renegotiation of Area Collective Bargaining Agreements shall be resolved in accordance with the procedure set forth in Article 9 of this Agreement.

SECTION 2. LABOR DISPUTES DURING AREA CONTRACT NEGOTIATIONS

The Unions agree that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity or other violations of Article 7 affecting Project Work by any Local Union involved in the renegotiation of Area Local Collective Bargaining Agreements nor shall there be any lock-out with respect to Project Work affecting a Local Union during the course of such renegotiations.

ARTICLE 23 - WORKERS' COMPENSATION ADR

The parties agree that the PC may implement a Workers' Compensation Alternative Dispute Resolution program which is consistent with Section 25 (2-C) of the New York Workers' Compensation Law. The final terms of the program shall be determined by the PC, after

consultation with the Union. If the PC is not satisfied with the cost savings to be generated by such a program, it may, in its discretion, decline to implement, or at any time after implementation decline to continue, that program.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and effective as of the _____ day of _____, 2022.

FOR PRIME CONTRACTOR

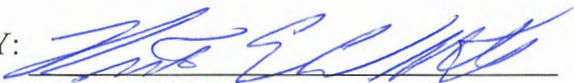
BY _____
(Name/Title)

**FOR THE BUILDING & CONSTRUCTION TRADES
CENTRAL AND NORTHERN NEW YORK BUILDING CONSTRUCTION TRADES
COUNCIL**

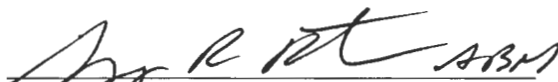
BY:  - PRESIDENT
(Name/Title)

FOR THE LOCAL UNIONS

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS,
LOCAL NO. 30

BY: 
(Name/Title)

BOILERMAKERS' UNION LOCAL NO. 175

BY: 
(Name/Title)

BRICKLAYERS AND ALLIED CRAFT LOCAL NO. 2

BY: _____
(Name/Title)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS UNION LOCAL NO. 43

BY: _____
(Name/Title)

consultation with the Union. If the PC is not satisfied with the cost savings to be generated by such a program, it may, in its discretion, decline to implement, or at any time after implementation decline to continue, that program.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and effective as of the _____ day of _____, 2022.

FOR PRIME CONTRACTOR

BY _____
(Name/Title)

**FOR THE BUILDING & CONSTRUCTION TRADES
CENTRAL AND NORTHERN NEW YORK BUILDING CONSTRUCTION TRADES
COUNCIL**

BY: _____
(Name/Title)

FOR THE LOCAL UNIONS

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS,
LOCAL NO. 30

BY: _____
(Name/Title)

BOILERMAKERS' UNION LOCAL NO. 175

BY: _____
(Name/Title)

BRICKLAYERS AND ALLIED CRAFT LOCAL NO. 2

BY: *President*
(Name/Title)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS UNION LOCAL NO. 43

BY: _____
(Name/Title)

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL NO. 60

BY: Mathias Nishits BM/FST
(Name/Title)

CONSTRUCTION AND GENERAL LABORERS' LOCAL NO. 633

BY: [Signature] B/m
(Name/Title)

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 158

BY: Robert H. D. 545 eng.
(Name/Title)

INTERNATIONAL UNION OF OPERATING ENGINEERS TECHNICAL ENGINEERING DIVISION LOCAL 158

BY: Robert H. D. 545 eng.
(Name/Title)

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY LOCAL 267-81

BY: Anthony R. Lutz BM/FST
(Name/Title)

UNITED UNION OF ROOFERS, WATERPROOFERS AND ALLIED WORKERS LOCAL NO. 195

BY: Phil J. Ross local 159 BM
(Name/Title)

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL NO. 58

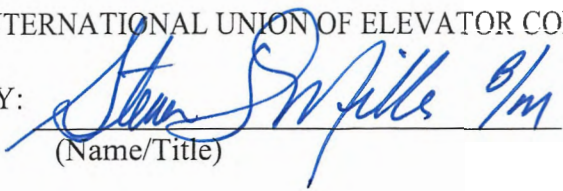
BY: [Signature] President B.S. Hoge
(Name/Title)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL NO. 317

BY: [Signature] President
(Name/Title)


INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL NO. 62

BY:


(Name/Title)

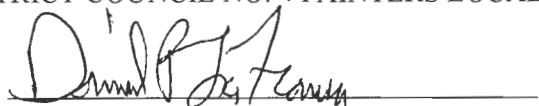
DISTRICT COUNCIL NO. 4 GLAZIERS LOCAL NO. 677

BY:


(Name/Title)

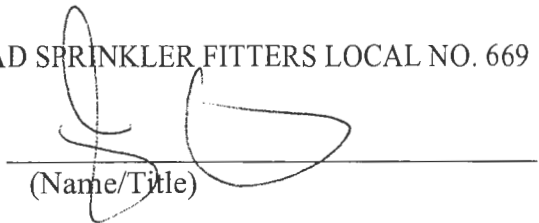
DISTRICT COUNCIL NO. 4 PAINTERS LOCAL NO. 31

BY:


(Name/Title)

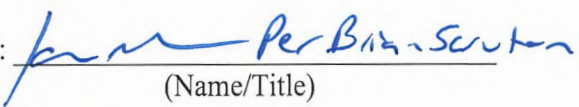
ROAD SPRINKLER FITTERS LOCAL NO. 669

BY:


(Name/Title)

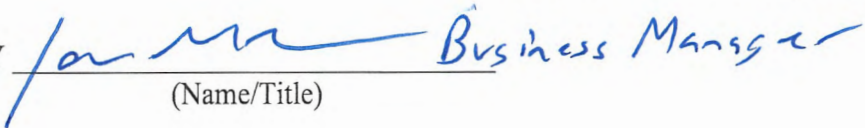
MILLWRIGHTS LOCAL UNION 1163

BY:


(Name/Title)

NORTH ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS, LOCAL 277

BY:


(Name/Title)

OPERATIVE PLASTERERS & CEMENT MASONS LOCAL NO. 111

BY:

(Name/Title)

PLASTERERS & CEMENT MASONS LOCAL NO. 9

BY:

(Name/Title)

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL NO. 82

BY: _____

(Name/Title)

DISTRICT COUNCIL NO. 4 GLAZIERS LOCAL NO. 677

BY: _____

(Name/Title)

DISTRICT COUNCIL NO. 4 PAINTERS LOCAL NO. 31

BY: _____

(Name/Title)

ROAD SPRINKLER FITTERS LOCAL NO. 669

BY: _____

(Name/Title)

MILLWRIGHTS LOCAL UNION 1163

BY: _____

(Name/Title)

NORTH ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS, LOCAL 277

BY: _____

(Name/Title)

OPERATIVE PLASTERERS & CEMENT MASONS LOCAL NO. 111

BY: Paul Brown 1st VP

(Name/Title)

PLASTERERS & CEMENT MASONS LOCAL NO. 9

BY: Paul Brown B.M.

(Name/Title)

SCHEDULE A – LOCAL COLLECTIVE BARGAINING AGREEMENTS

ARTICLES OF AGREEMENT between the INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO and THE FIRMS WHOSE SIGNATURES ARE AFFIXED HERETO January 1, 2022 – December 31, 2024

BRICKLAYERS & ALLIED CRAFTWORKERS BUILDING AGREEMENT between EASTERN CONTRACTORS ASSOCIATION, INC. CONSTRUCTION EMPLOYERS ASSOCIATION OF CNY, INC. and BRICKLAYERS AND ALLIED CRAFTWORKERS LOCAL UNION NO. 2, NY June 1, 2021 – May 31, 2026

BRICKLAYERS & ALLIED CRAFTWORKERS HEAVY & HIGHWAY AGREEMENT between EASTERN CONTRACTORS ASSOCIATION, INC. & CONSTRUCTION EMPLOYERS ASSOCIATION OF CENTRAL NEW YORK, INC. and BRICKLAYERS AND ALLIED CRAFTWORKERS LOCAL UNION NO. 2, NY/VT June 1, 2021 – May 31, 2026

NORTHWEST REGIONAL AGREEMENT between THE ASSOCIATIONS and the NORTHEAST REGIONAL COUNCIL OF CARPENTERS of the UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA June 1, 2021 – May 31, 2026

MEMORANDUM OF AGREEMENT between LABOR RELATIONS DIVISION WESTERN NEW YORK REGION ASSOCIATED GENERAL CONTRACTORS OF NEW YORK STATE LLC and NORTHEAST REGIONAL COUNCIL OF CARPENTERS UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA May 1, 2022 – April 30, 2025

AGREEMENT between LABOR RELATIONS DIVISION WESTERN NEW YORK REGION ASSOCIATED GENERAL CONTRACTORS OF NEW YORK STATE LLC and NORTHEAST REGIONAL COUNCIL OF CARPENTERS UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA May 1, 2019 – April 30, 2022

MEMORANDUM OF AGREEMENT between CONSTRUCTION INDUSTRY EMPLOYERS ASSOCIATION and CEMENT MASONS LOCAL UNION NO. 111 May 15, 2021 – June 31, 2026

AGREEMENT between CONSTRUCTION INDUSTRY EMPLOYERS ASSOCIATION, INC. and the CEMENT MASONS' LOCAL UNION NO. 111 May 15, 2016 – May 14, 2021

INSIDE CONSTRUCTION AGREEMENT by and between LOCAL UNION 43, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS and FINGER LAKES, NY CHAPTER NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION June 1, 2021 – May 31, 2024

AGREEMENT by and between the NATIONAL ELEVATOR BARGAINING ASSOCIATION and the INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS July 9, 2022 – July 8, 2027

COLLECTIVE BARGAINING AGREEMENT of INTERNATIONAL UNION OF PAINTERS & ALLIED TRADES OF AMERICA & CANADA AFL-CIO DISTRICT COUNCIL #4 GLAZIERS ARCHITECTURAL METAL & GLASSWORKERS OF WESTERN NEW YORK and INDEPENDENT CONTRACTORS May 1, 2022 – April 30, 2025

AGREEMENT between THE INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ALLIED WORKERS LOCAL NO. 30 SYRACUSE, NEW YORK and THE SYRACUSE INSULATION CONTRACTORS May 1, 2020 – April 30, 2023

WORKING AGREEMENT between THE IRON WORKERS UPSTATE LOCALS OF NEW YORK AND VICINITY, CONSISTING OF INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL, AND REINFORCING IRON WORKERS LOCAL UNIONS NOS. 6, 9, 12, 33, 60 AND 440 and UPSTATE IRON WORKER EMPLOYERS ASSOCIATION, INC. July 1, 2021 – June 30, 2024

WORKING AGREEMENT between LABORERS INTERNATIONAL UNION OF NORTH AMERICA UPSTATE NEW YORK LABORERS LOCAL UNION NO. 633 and CONSTRUCTION EMPLOYERS ASSOCIATION OF CENTRAL NEW YORK, INC. June 1, 2018 – May 31, 2022

AGREEMENT between LABOR RELATIONS DIVISION CENTRAL NEW YORK REGION ASSOCIATED GENERAL CONTRACTORS OF NEW YORK STATE, LLC and LOCALS 633, 785 AND 1822 LABORER'S INTERNATIONAL UNION OF NORTH AMERICA April 1, 2019 – March 31, 2022

MILLWRIGHT AGREEMENT between THE EASTERN MILLWRIGHT REGIONAL COUNCIL representing MILLWRIGHTS LOCAL UNION 1163 and the MILLWRIGHT CONTRACTORS, ASSOCIATION, INC. June 1, 2021 – May 31, 2024

OPERATING ENGINEERS BUILDING AGREEMENT between THE ASSOCIATIONS and LOCAL NO. 158 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS March 1, 2019 – February 28, 2023

AGREEMENT between LABOR RELATIONS DIVISION OF CENTRAL NEW YORK REGION ASSOCIATED GENERAL CONTRACTORS OF NEW YORK STATE, LLC and INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION NO. 158 April 1, 2019 – March 31, 2023

UP-STATE NEW YORK TECHNICAL ENGINEERS AGREEMENT 2021-2026 between INDEPENDENT EMPLOYERS and INTERNATIONAL UNION OF OPERATING ENGINEERS LOCALS 17, 463, & 158 April 1, 2021 – March 31, 2026

MASTER COLLECTIVE BARGAINING AGREEMENT by and between PAINTERS DISTRICT COUNCIL NO. 4 and INDEPENDENT CONTRACTORS May 1, 2022 – April 30, 2027

PLASTERERS & CEMENT MASONS UNION LOCAL #9 BUFFALO, NEW YORK COLLECTIVE BARGAINING AGREEMENT April 1, 2020 – March 31, 2023

AGREEMENT by and between THE MECHANICAL TRADES AND MASTER PLUMBERS ASSOCIATION OF CENTRAL NEW YORK, INC. and PLUMBERS & STEAMFITTERS LOCAL 267 May 1, 2022 – April 30, 2024

AGREEMENT by and between ROOFING CONTRACTORS ASSOCIATION, INC. and LOCAL 195 OF NEW YORK UNITED UNION OF ROOFERS, WATERPROOFERS AND ALLIED WORKERS, AFL-CIO June 1, 2022 – May 31, 2025

AGREEMENT by and between CENTRAL NEW YORK SHEET METAL CONTRACTORS ASSOCIATION INC. and LOCAL UNION NO. 58 OF SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION May 1, 2021 – April 30, 2026

AGREEMENT between NATIONAL FIRE SPRINKLER ASSOCIATION, INC. and ROAD SPRINKLER FITTERS' LOCAL UNION NO. 669 April 1, 2020 – March 31, 2025

WORKING AGREEMENT between TEAMSTERS LOCAL NO. 317 affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS and CONSTRUCTION EMPLOYERS ASSOCIATION OF CENTRAL NEW YORK, INC. June 1, 2019 – May 31, 2023

HEAVY AND HIGHWAY AGREEMENT with TEAMSTERS LOCAL 317 affiliated with THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS June 1, 2022 – May 31, 2025

SCHEDULE B – LETTER OF ASSENT

This is to certify that the undersigned Contractor:

1. has examined a copy of the Project Labor Agreement negotiated with the Central and Northern New York Building and Construction Trades Council, AFL-CIO and the signatory Unions for use on the I-81 Viaduct Project Phase 1 Contract 1 Project;

2. on behalf of itself and all its employees, accepts and agrees to be bound by the terms and conditions of the Project Labor Agreement, together with any and all amendments and supplements now existing or which are later made hereto;

3. has no commitments or agreements which would preclude its full compliance with the terms and conditions of this Project Labor Agreement; and

4. agrees to secure from any contractor(s) which is or becomes a subcontractor(s), a duly executed Letter of Assent in a form identical to this document prior to commencement of any work.

Name of Contractor:

Print

By: _____

Title: _____

Date: _____

SCHEDULE C – PRE-JOB QUESTIONNAIRE

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
I-81 VIADUCT PROJECT PHASE 1 CONTRACT 1
NYSDOT CONTRACT NUMBER D900054 (PIN 3501.90)**

**PROPOSED TRADE ASSIGNMENTS
PRE-JOB CONFERENCE**

TO: Central and Northern New York Building and Construction Trades Council

CLIENT: New York State Department of Transportation

ADMINISTRATOR: The Prime Contractor
Fax: (XXX) XXX-XXXX

CONTRACTOR: _____

CONTRACT#: _____

NAME OF PROJECT: _____

PURPOSE: To make proposed jurisdictional trade assignments, broken down by craft and classification, as well as to discuss details and answer questions relating to the project scope of work, safety and job requirements.

MEETING PLACE: TBD
(XXX) XXX-XXXX Office
(XXX) XXX-XXXX Fax

MEETING DATE: _____

RESPONSE DATE: _____

MEETING DATE: _____

**** PLEASE TYPE IN ALL INFORMATION ****

1. SCOPE OF WORK:

2. ESTIMATED WORK SCHEDULE:

Approximate Commencement Date: _____

Approximate Completion Date: _____

3. ADDRESSES:

Job Location: _____

Company's Local Mailing Address: _____

Trust Fund Billing Address: _____

4. CONTRACTOR PERSONNEL:

Project Manager:

Office Telephone # _____

Mobile Telephone # _____

Fax Telephone # _____

Superintendent:

Office Telephone # _____
Mobile Telephone # _____
Fax Telephone # _____

Safety Representative:

Office Telephone # _____
Mobile Telephone # _____
Fax Telephone # _____

Drug Test Result Coordinator: (List in order of contact priority)

Name of First Contact: _____
Office Telephone # _____
Mobile Telephone # _____

Name of Second Contact: _____
Office Telephone # _____
Mobile Telephone # _____

Name of Third Contact: _____
Office Telephone # _____
Mobile Telephone # _____

Dispatch Contact Personnel: The following Contractor personnel are the only ones authorized to call the hiring halls to have craft workers dispatched out to this project:

1. _____
2. _____
3. _____

Referral procedures will be in accordance with the provisions contained within the Project Labor Agreement. The referral procedures are to be posted in the hiring halls in order to be in full compliance with the law.

5. WORKFORCE PROJECTIONS:

Workforce Objectives:

Minority/Women Participation: 20 Percent of Hours by Craft (Federal Definition of Minority)

CRAFT	PEAK No.	AVG No.	TOTAL HOURS	TIER 1 HOURS	TIER 1 %	TIER 2 HOURS	TIER 2 %
Asbestos Workers							
Boilermakers							
Bricklayers							
Carpenters							
• Carpenters							
• Pile Drivers							
• Millwrights							
Cement Masons							
Electrical Workers (Inside Wiremen)							
Elevator Constructors							
Glaziers							
Insulators							
Ironworkers							
• Structural							
• Rebar							
Laborers							
Operating Engineers							
• Op. Engineers							
• Op. Engineers Technical							
Painters							
Pipefitters/Plumber							
Plasterers							
Roofers							
Sheetmetal Workers							
Sprinkler Fitters							
Teamsters							

6. OPERATIONAL INFORMATION

Shift Schedule: AM _____ to PM _____

Number of Shifts: _____

Pay Day: Thursday

End of Pay Period: _____

First Aid Facilities: Kits _____

Sanitary Facilities: Portable _____

Job Site Telephone Number: _____

Job Site Fax Number: _____

PROPOSED TRADE ASSIGNMENTS

NAME OF CONTRACTOR: _____

CONTRACT # _____

The following jurisdictional trade assignments are proposed and any Union in disagreement with any of these assignments shall state such disagreement at the pre-job conference and follow the procedure set forth at Article 10, Section 10.4.

Asbestos Workers: _____

Boilermakers: _____

Bricklayers: _____

Carpenters: _____

Cement Masons: _____

Electrical Workers (Inside Wiremen): _____

Glaziers: _____

Insulators: _____

Ironworkers (Structural): _____

Ironworkers (Rebar): _____

Laborers: _____

Millwrights: _____

Operating Engineers: _____

Painters: _____

Pile Drivers: _____

Asbestos Workers: _____

Pipefitters/Plumbers: _____

Plasterers: _____

Roofers: _____

Sprinkler Fitters: _____

Sheetmetal Workers: _____

Teamsters: _____

UTILIZATION OF EQUIPMENT

NAME OF CONTRACTOR: _____

CONTRACT #: _____

List of equipment and the proposed assignment of craft for full time use of operation of each piece:

EQUIPMENT:

CRAFT:

1. _____

2. _____

3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____

TOOLS-OF-THE-TRADE: (Part-time use -- lo listing of craft is necessary)

EQUIPMENT:

EQUIPMENT:

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |

SCHEDULE D - SIDE LETTER OF AGREEMENT

To the Project Labor Agreement Covering the
I-81 Viaduct Project Contract 1 Phase 1

This Side Letter of Agreement shall be binding on all entities (Unions, Contractors and/or others) covered by the Project Labor Agreement covering the I-81 Viaduct Project Contract 1 Phase 1 ("PLA"), entered into on the ____ day of _____, 2022, to the same extent as if incorporated therein.

This provision will not be used if the resulting participation totally excludes or completely prevents a building trades craft discipline from participating with any particular subcontractor with respect to Covered Work for that trade.

REFERRALS FOR SUBCONTRACTORS WORKING AS APPROVED DISADVANTAGED BUSINESS ENTERPRISES

Notwithstanding Article 4, Section 2 of the PLA, or any provision of that agreement, and to the full extent permitted by law, a Contractor may designate subcontractors, who have been identified in the Contractor's approved Disadvantaged Business Utilization Plan and whose subcontracts in total represent approximately 12 to 15%, as exempt from the hiring hall referral procedure of Article 4, Section 2, and instead that subcontractor may request the first employee from the hiring hall and then use two of its existing employees.. To the extent such a subcontractor uses more than three employees on Covered Work, the PLA hiring hall provision will apply beginning with the 4th employee and then continue with one (contractor's employee) and one (hiring hall referral) until the requirements for that craft are met. For purposes of applying this exemption to individual subcontractors, the work of each building trade craft discipline shall be considered separately in striving for compliance with the contractor's approved Disadvantaged Business Utilization Plan. Any excluded subcontractor has the option of using the above hiring hall (with the 25% drag along) procedure of Article 4, Section 2 starting with its first employee for Covered Work.

Any disputes arising under this Side Letter of Agreement are subject to Article 7 (Work Stoppages and Lock Outs) and Article 9 (Grievance and Arbitration Procedure) of the PLA.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and effective as of the ____ day of _____, 2022.

FOR THE PRIME CONTRACTOR

BY: _____

(Name/Title)

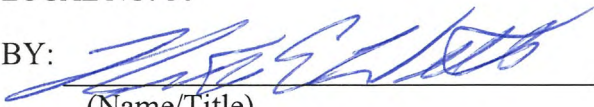
**FOR THE BUILDING & CONSTRUCTION TRADES
CENTRAL AND NORTHERN NEW YORK BUILDING CONSTRUCTION TRADES COUNCIL**

BY: _____

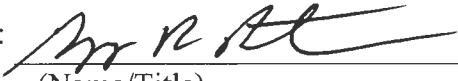

(Name/Title) Greg Lancette, President

FOR THE LOCAL UNIONS

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS,
LOCAL NO. 30

BY: 
(Name/Title)

BOILERMAKERS' UNION LOCAL NO. 175

BY: 
(Name/Title)

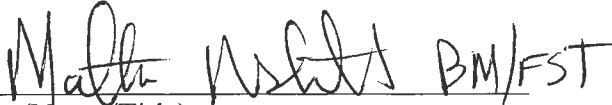
BRICKLAYERS AND ALLIED CRAFT LOCAL NO. 2

BY: _____
(Name/Title)

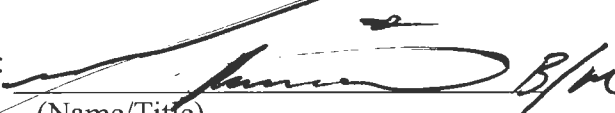
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS UNION LOCAL NO. 43

BY: _____
(Name/Title)

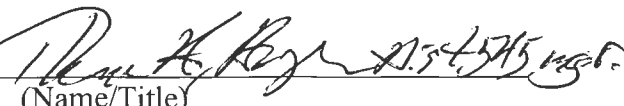
INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON
WORKERS LOCAL NO. 60

BY: 
(Name/Title)

CONSTRUCTION AND GENERAL LABORERS' LOCAL NO. 633

BY: 
(Name/Title)

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 158

BY: 
(Name/Title)

FOR THE LOCAL UNIONS

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ALLIED WORKERS,
LOCAL NO. 30

BY: _____
(Name/Title)

BOILERMAKERS' UNION LOCAL NO. 175

BY: _____
(Name/Title)

BRICKLAYERS AND ALLIED CRAFT LOCAL NO. 2

BY: *John B. President*
(Name/Title)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS UNION LOCAL NO. 43

BY: _____
(Name/Title)

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON
WORKERS LOCAL NO. 60

BY: _____
(Name/Title)


CONSTRUCTION AND GENERAL LABORERS' LOCAL NO. 633

BY: _____
(Name/Title)

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 158

BY: _____
(Name/Title)

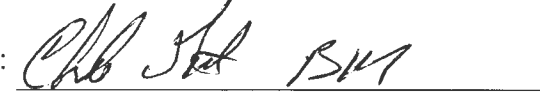
INTERNATIONAL UNION OF OPERATING ENGINEERS TECHNICAL ENGINEERING
DIVISION LOCAL 158

BY:  Rep. K. H. Ditt + B. B. B. B.
(Name/Title)

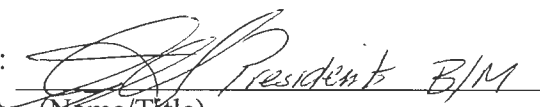
UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES
OF THE PLUMBING AND PIPEFITTING INDUSTRY LOCAL 26781

BY:  B. M. / F. S. T.
(Name/Title)


UNITED UNION OF ROOFERS, WATERPROOFERS AND ALLIED WORKERS LOCAL NO. 195

BY:  B. M.
(Name/Title)


SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL NO. 58

BY:  President B. M.
(Name/Title)

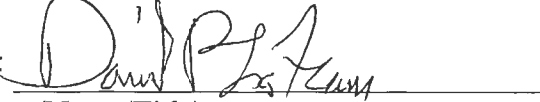
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS LOCAL NO. 317

BY:  President
(Name/Title)

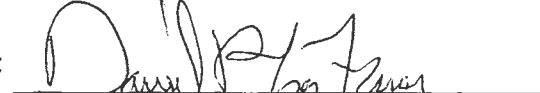
INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL NO. 62

BY:  B. M.
(Name/Title)


DISTRICT COUNCIL NO. 4 GLAZIERS LOCAL NO. 677

BY:  D. P. L. F. M.
(Name/Title)

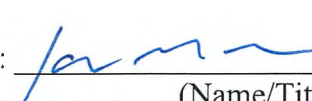
DISTRICT COUNCIL NO. 4 PAINTERS LOCAL NO. 31

BY:  D. P. L. F. M.
(Name/Title)

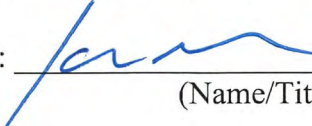
ROAD SPRINKLER FITTERS LOCAL NO. 669

BY: 
(Name/Title)

MILLWRIGHTS LOCAL UNION 1163

BY:  Per Brian Scruton
(Name/Title)

NORTH ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS, LOCAL 277

BY:  Business Manager
(Name/Title)

OPERATIVE PLASTERERS & CEMENT MASONS LOCAL NO. 111

BY: _____
(Name/Title)

PLASTERERS & CEMENT MASONS LOCAL NO. 9

BY: _____
(Name/Title)

ROAD SPRINKLER FITTERS LOCAL NO. 669

BY: _____
(Name/Title)

MILLWRIGHTS LOCAL UNION 1163

BY: _____
(Name/Title)

NORTH ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS, LOCAL 277

BY: _____
(Name/Title)

OPERATIVE PLASTERERS & CEMENT MASONS LOCAL NO. 111

BY: Paul M. International VP
(Name/Title)

PLASTERERS & CEMENT MASONS LOCAL NO. 9

BY: Paul M. BM
(Name/Title)

SCHEDULE E - WAIVER OF EMPLOYEE BENEFIT CONTRIBUTIONS

Concerning the Project Labor Agreement Covering the
I-81 VIADUCT PROJECT PHASE I CONTRACT 1
NYSDOT CONTRACT NUMBER D900054

In accordance with the provisions of Article 11, Section 2 of the Project Labor Agreement covering the I-81 Viaduct Project Contract 1 Phase 1 Project, I am hereby waiving the right to payment on my behalf of contributions into one or more of the applicable jointly trustee funds designated on Schedule A and, in lieu of such payments and benefit coverage, am requesting and directing that I receive an equivalent amount of such benefit payments either (i) with coverage under my employer's bona fide private benefit plans, provided such plans satisfy the requirements of the Internal Revenue Code, or (ii) by electing to have my employer include the full amount of such benefit in a supplemental check to me. I acknowledge that when the benefit payments are paid into private plans, the payments to be made on my behalf must equal the total supplement amount set forth at the Wage and Benefit sheet referred in Section 1 of this Article and must be consistent with the requirements of Section 220, and that any shortfall will be included in a supplemental check issued to me by my employer.

Date: _____

Signed: _____

Print Name of Employer: _____

accordance with NYSDOT Bridge Detail (BD) Sheets shall be used and extend a minimum of 2'-0" above the top of the concrete barrier.

BL 81 SB OVER CHURCH STREET

BIN: 1031701

- 11-1. Remove existing bridge railing and transition railing along the west fascia.
- 11-2. Reconstruct the existing bridge deck as required and install a noise barrier, Test Level (TL)-5 Single Slope (Half Section) Concrete Bridge Barrier, and transition railing along the west fascia. Analyze existing bridge components, with the inclusion of loads imposed by the new noise barrier and concrete barrier, for compliance with all project requirements. Strengthen or replace bridge components as necessary.

REPLACEMENT CULVERTS

N-6

- 12-1. Minimum required clear span is 7.5 feet.

N-8

- ~~13-1. Minimum required clear span is 11.5 feet.~~

N-20 (Shall meet Bridge Design Criteria)

- ~~14-1.~~ 13-1. Minimum required clear span is 31.5 feet.

N-21 (Shall meet Bridge Design Criteria)

- ~~15-1.~~ 14-1. Minimum required clear span is 30 feet.

N-23

- ~~16-1.~~ 15-1. Minimum required clear span is 14 feet.

Water Resource Mitigation

General Ecology - Culverts	Action Summary	NYSDOT Standard Specifications	Description of Work
Outfall-N-1	Pipe replacement	Section 206 Trench, Culvert, and Structure Excavation	A highway drainage pipe (ex. 24" RCP), Outfall-N-1, that currently outlets into dry swale densely populated with common reed (in triangular interchange area north of Mud Creek/Wetland 10L, where an infiltration or detention basin is proposed) would be reconstructed and extended during HWY ROW reconstruction.
Outfall N-2	Pipe replacement	Section 206 Trench, Culvert, and Structure Excavation, may need Special spec 555.10000006 Abandon Existing Culvert	A highway drainage pipe (ex. 36" CMP), Outfall-N-2, that currently outlets to a steep wet-weather-flow tributary to Mud Creek would be relocated, requiring the construction of a new drainage pipe. There is erosion downstream of the existing outfall; the Design-Builder shall conduct a H&H analysis to ensure no erosion will occur downstream of the new drainage pipe and/or install outfall protection, an energy dissipator, and/or possibly lightly reinforce the ex channel downstream of the outfall. Coordination with the Geotechnical Consultant is recommended.
Culvert E-41	Culvert extension	Section 206 Trench, Culvert, and Structure Excavation, Special spec 553.010001 Coffor Dam	Design-Builder shall extend the existing triple barrel culvert structure 10 feet downstream into the unnamed tributary to North Branch Ley Creek, creating 134 linear feet of additional culvert and reducing the creek length to 40 linear feet, and reduce the surface water area to 400 square feet. The extended culvert outfall shall include an energy dissipator or similar to protect the streambed downstream of the culvert from erosion. NYSDEC specifies that the width of the structure shall be 1.25 times the normal width of the streambed. The overall culvert capacity should be able to accommodate expected high flows. There is a special spec for extension of a CMP culvert with a paved invert; this could be potentially be modified for this culvert (603.07911806)
Culvert N-6	Replace with Open Bottom Culvert	Section 206 Trench, Culvert, and Structure Excavation, Special spec 553.010001 Coffor Dam, Section 620 Bank and Channel Protection	Design-Builder shall extend culvert by 21 feet to connect with the existing wetland; at minimum, the culverts must have a width at bankfull (1.25 x Bankfull width) and would be embedded at least 20 percent at the inlet
Culvert N-8	Culvert extension	Section 206 Trench, Culvert, and Structure Excavation, Special spec 553.010001 Coffor Dam, Section 620 Bank and Channel Protection	The Design-Builder shall extend the culvert by 64 feet to accommodate the new HWY ROW and safely convey the South Branch of Pine Grove Brook; at minimum, the culverts must have a width at bankfull (1.25 x Bankfull width) and would be embedded at least 20 percent at the inlet
Culvert N-9	Replace with Open Bottom Culvert	Section 206 Trench, Culvert, and Structure Excavation	The Design-Builder shall replace the existing culvert with an open bottom culvert, and extend the length by 75 feet into the triangular interchange area to accommodate the new highway geometry
Culvert N-14	Demolish ramp, ramp embankment, and 98 feet of existing culvert	Section 206 Trench, Culvert, and Structure Excavation, Special spec 555.10000006 Abandon Existing Culvert	The Design-Builder shall remove the existing ramp and culvert and grade the areas in order to implement the Restoration Plan. Culvert N-14 is currently 234 linear feet, 98 linear feet of which would be removed from the demolition area (the remainder of the pipe is needed to maintain drainage patterns under the remaining HWY ROW ramp.)
Culvert N-15	Demolish ramp, ramp embankment, and existing 90 foot Culvert	Section 206 Trench, Culvert, and Structure Excavation, Special spec 555.10000006 Abandon Existing Culvert	The Design-Builder shall remove the existing ramp and 80 foot long culvert and grade the areas in order to implement the Restoration Plan.
Culvert N-20	Replace with Open Bottom Culvert	Section 206 Trench, Culvert, and Structure Excavation, Special spec 553.010001 Coffor Dam	The Design-Builder shall replace the existing culvert with an open bottom culvert. At minimum, the culvert must have a width at bankfull (1.25 x Bankfull width) and would be embedded at least 20 percent at the inlet. Design-Builder shall use H&H modeling to ensure sufficient capacity for bankfull storm event and flood events. Current culvert sizes may be too small. Inlets and outlets need to be embedded in the embankment and protected with riprap to prevent scour - H&H modeling will help determine erosive forces and extent of protection needed. Any area disturbed during construction shall be stabilized after.
Culvert N-21	Replace with Open Bottom Culvert, further downstream from original culvert, to accommodate new ROW geometry	Section 206 Trench, Culvert, and Structure Excavation, Special spec 553.010001 Coffor Dam	The Design-Builder shall replace the existing culvert with an open bottom culvert. At minimum, the culvert must have a width at bankfull (1.25 x Bankfull width) and would be embedded at least 20 percent at the inlet. The Design-Builder shall shift the Culvert N-21 downstream. The open bottom culvert would be 6 feet longer than the existing culvert. It would result in a decrease in length to the section of Mud Creek between N-21 and N-20, which is currently 839 linear feet (0.40 acres) and would be reduced to 795 linear feet (0.38 acres). This would result in a 44 linear foot decrease in length, or 0.02 acres of surface water.
Culvert N-23 and N-21	Bridge and retaining wall construction	Section 206 Trench, Culvert, and Structure Excavation, Special spec 553.010001 Coffor Dam	The Design-Builder shall construct a new bridge between the existing N-23 and N-21 culverts. The Design-Builder shall avoid bridge construction in any portions of Mud Creek and shall avoid raising the floodplain where possible.
Culvert N-23	Replace with Open Bottom Culvert	Section 206 Trench, Culvert, and Structure Excavation, Special spec 553.010001 Coffor Dam	The Design-Builder shall replace the existing culvert with an open bottom culvert of equal length. At minimum, the culvert must have a width at bankfull (1.25 x Bankfull width) and would be embedded at least 20 percent at the inlet. Design-Builder shall size culverts using H&H modeling to ensure sufficient capacity for bankfull storm event and flood events. Current culvert sizes may be too small. Inlets and outlets need to be embedded in the embankment and protected with riprap to prevent scour - H&H modeling will help determine erosive forces and extent of protection needed. Any area disturbed during construction shall be stabilized after.

Floodplain Restoration associated with removal of existing ramp, ramp embankment, and culverts N-14 and N-15	Restore 2.0 acres of floodplain associated with a tributary to Mud Creek associated with Culverts N-14 and N-15)	Section 610 - Ground Vegetation - Preparation, Establishment and Management (All subsections except 1.02, 1.03, 1.12, 1.13, 2.03, 2.05, 2.12, and 2.13); Section 611 - Planting, Transplanting And Post Planting Care; Section 713 Landscape Development Materials	The Design-Builder shall develop a Restoration Plan for wetland, channel, and floodplain areas that would be temporarily disturbed during construction and/or for the channel and floodplain areas that have been identified for restoration. One section of the Restoration Plan shall include the restoration of the floodplain. At minimum, 2.0 acres of floodplain would be restored. The Design-Builder shall identify a reference floodplain and justification for its use and present it to NYSDEC for review and approval. One of the goals and objectives will be to grade the land to fully reconnect the adjacent wetland. The Restoration Plan shall establish goals and objectives as part of the Restoration Plan for review and approval by NYSDEC. At minimum, the entire restoration area shall be seeded at a rate specified by 610-3.04. Plugs and vines and groundcovers shall be planted at a rate of 1 plant per 4 sq. feet. Trees and shrubs at a rate of no less than 350 bare root plants per acre. At minimum, herbaceous plugs shall be spaced no more than 18" apart. The Design-Builder shall develop a Monitoring and Adaptive Management Plan as part of the development of the Restoration Plan. The Design-Builder shall follow all permit conditions outlined in the NYSDEC/USACE permits, including the Performance Standards established as part of the Monitoring and Adaptive Management Plan. At minimum, the Performance Standards shall stipulate that plant survival shall not be less than 85% after the five-year monitoring period and shall not be less than 85% for three or more consecutive years within the five-year monitoring period. Invasive species (specifically Phragmites australis) shall not exceed 5% at the end of the five-year monitoring period.
Culvert N-22	Remove culvert and restore 250 feet of Mud Creek and associated wetland	Section 610 - Ground Vegetation - Preparation, Establishment and Management (All subsections except 1.02, 1.03, 1.12, 1.13, 2.03, 2.05, 2.12, and 2.13); Section 611 - Planting, Transplanting And Post Planting Care; Section 713 Landscape Development Materials; Special spec for fine channel grading (from Gay's Point project)	The Design-Builder shall develop a Restoration Plan for wetland, channel, and floodplain areas that would be temporarily disturbed during construction and/or for the channel and floodplain areas that have been identified for restoration. One section of the Restoration Plan will include the channel and riparian buffer restoration of Mud Creek. Mud Creek channel restoration will mimic an upstream portion of Mud Creek. The Design-Builder shall select a reference condition and justification for its use as part of its development of the Restoration Plan and the Restoration Plans goals and objectives. Only native species, including native aquatic plants, shall be used in the restoration plan. The Design-Builder shall submit the restoration plan to NYSDEC for approval. The vegetated buffer shall have a minimum width of 50' where space is limited and shall follow the Three Zone Concept outlined in NYSDEC Riparian Buffers guidance (https://www.dec.ny.gov/chemical/106345.html). Where possible, the vegetated buffer shall be 100' wide to meet NYSDEC's riparian corridor guidance. The Design-Builder shall develop a Monitoring and Adaptive Management Plan as part of the development of the Restoration Plan. The Design-Builder shall follow all permit conditions outlined in the NYSDEC/USACE permits, including the Performance Standards established as part of the restoration monitoring plan. At minimum, the Performance Standards shall stipulate that plant survival shall not be lower than 85% after the five year monitoring period and shall not be lower than 85% for three or more consecutive years within the five year period. Invasive species (specifically Phragmites australis) shall not exceed 5% at the end of the five year monitoring period.
Floodplain restoration associated with removal of Culverts N-21 and N-22 and associated existing highway embankments	Restore 1.6 acres of floodplain adjacent to mainstem of Mud Creek	Section 610 - Ground Vegetation - Preparation, Establishment and Management (All subsections except 1.02, 1.03, 1.12, 1.13, 2.03, 2.05, 2.12, and 2.13); Section 611 - Planting, Transplanting And Post Planting Care; Section 713 Landscape Development Materials	The Design-Builder shall develop a Restoration Plan for wetland, channel, and floodplain areas that would be temporarily disturbed during construction and/or for the channel and floodplain areas that have been identified for restoration. One section of the Restoration Plan shall include the restoration of the floodplain. At minimum, 1.6 acres of floodplain would be restored. The Design-Builder shall identify a reference floodplain and present the reference floodplain to NYSDEC for review and approval. One of the goals and objectives will be to grade the land to fully reconnect the adjacent wetland. The Restoration Plan shall establish goals and objectives as part of the Restoration Plan for review and approval by NYSDEC. At minimum, the entire restoration area shall be seeded at a rate specified by 610-3.04. Plugs and vines and groundcovers shall be planted at a rate of 1 plant per 4 sq. feet. Trees and shrubs at a rate of no less than 350 bare root plants per acre. At minimum, herbaceous plugs shall be spaced no more than 18" apart. The Design-Builder shall develop a Monitoring and Adaptive Management Plan as part of the development of the Restoration Plan. The Design-Builder shall follow all permit conditions outlined in the NYSDEC/USACE permits, including the Performance Standards established as part of the Monitoring and Adaptive Management Plan. At minimum, the Performance Standards shall stipulate that plant survival shall not be lower than 85% after the five year monitoring period and shall not be lower than 85% for three or more consecutive years within the five year period. Invasive species (specifically Phragmites australis) shall not exceed 5% at the end of the five year monitoring period.